

MISSOURI DEPARTMENT OF NATURAL RESOURCES
LAND RECLAMATION COMMISSION

In the Matter of:

MAGRUDER LIMESTONE CO.,)	
INC., Osage Beach)	
Quarry, Miller County,)	
Missouri,)	
Applicant.)	Proceeding Under The
)	Land Reclamation Act,
LINDA WEEKS, et al.,)	Sections
Petitioners,)	444.760-444.789, RSMo.
vs.)	
LARRY P. COEN, Staff)	
Director, Land)	
Reclamation Program,)	
Division of)	
Environmental Quality,)	
Respondent.)	

PUBLIC HEARING

APRIL 28, 2008

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<p>1 HEARING OFFICER: The Missouri 2 Department of Natural Resources Land Reclamation 3 Commission is convened in a formal public hearing in 4 the matter of Magruder Limestone Company, Inc., Osage 5 Beach Quarry, Miller County, Missouri, Applicant. 6 This is a proceeding under the Land Reclamation Act, 7 Sections 444.760 through 444.789, Revised Statutes of 8 Missouri. This is a proceeding for expansion of 9 Permit No. 0086. 10 The Petitioners in this action are the 11 Lake Ozark Osage Beach Joint Sewer Board, et al., 12 versus Larry P. Coen, Staff Director, Land 13 Reclamation Program Division of the Environmental 14 Quality, Respondent. This formal public hearing is 15 being held on Monday, April the 28th, 2008, at the 16 Nightingale Creek Room of the Lewis and Clark State 17 Office Building in Jefferson City, Missouri. It is a 18 formal public hearing that is a continuation of the 19 hearing which was held on March 24th and adjourned to 20 this date. 21 W.B. Tichenor, Hearing Officer, assigned 22 by the Land Reclamation Commission is presiding. I 23 would ask that all individuals turn off their cell 24 phones and pagers at this time and leave them off 25 until the hearing is adjourned. Appearing for the</p>	<p>1 Q. Zawislak. Would you state your full name 2 for the record. 3 A. Robert Charles Zawislak. 4 Q. And would you tell Mr. Tichenor what your 5 address is and where you live in relation to the 6 proposed quarry. 7 A. 145 Wood River Road, and that's Lake Ozark, 8 which is out of the city limits but on Wood River 9 Road, and I'm probably 200 yards from, I don't know, 10 it would be probably the northeast corner of the 11 property. 12 Q. Are you married? 13 A. No, I'm not. 14 Q. Do you have any children? 15 A. Yes. I have two, one living at home. 16 Q. And how old is that child? 17 A. 11. 18 Q. Does the child attend school? 19 A. Yes, he does. 20 Q. Does he attend school near your home? 21 A. At School of the Osage, which is down 22 Highway 42. 23 Q. Are you employed? 24 A. Yes, I am. 25 Q. And would you explain to Mr. Tichenor how</p>
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<p>1 parties: The Applicant appears by Counsel Adam 2 Troutwine and Richard S. Brownlee, III, Hendren & 3 Andrae, LLC, Jefferson City, Missouri. The 4 Petitioner Joint Sewer Board appears by Counsel Steve 5 Mauer, Bryan Cave, LLP, Kansas City. The individual 6 Petitioners in this action appear by Counsel Brian E. 7 McGovern and Ashley N. Schuette, McCarthy Leonard, et 8 al, LC, Chesterfield, Missouri. Respondent appears 9 by Counsel Timothy Duggan, Assistant Attorney 10 General. 11 At this time, Mr. McGovern, you are 12 recognized to present your witness. 13 MR. MCGOVERN: Thank you, Mr. 14 Tichenor. Mr. Zawislak? 15 HEARING OFFICER: Witness come 16 forward. 17 ROBERT C. ZAWISLAK, 18 of lawful age, produced, sworn, and examined on 19 behalf of the Individual Petitioners, deposes and 20 says: 21 EXAMINATION 22 QUESTIONS BY MR. MCGOVERN: 23 Q. First let me make sure I'm pronouncing your 24 name correctly. Zawislak? 25 A. Zawislak.</p>	<p>1 you're employed? 2 A. I'm self-employed. I'm a carpenter, 3 contractor, subcontractor. I've worked for myself 4 for 17 years now. 5 Q. And what type of work do you do as a sole 6 proprietor or contractor? 7 A. Pretty much everything but electricity. 8 Q. You say that you do everything. You're 9 talking about within the construction industry, 10 correct? 11 A. That's right. 12 Q. And when you subcontract, are you primarily 13 doing that from the standpoint of carpentry, plumbing 14 or -- 15 A. Well, I'm usually the -- I am a 16 subcontractor. I don't employ subcontractors. I am 17 a subcontractor to people that hire me. 18 Q. And what type of work do you generally do as 19 a subcontractor on behalf of general contractors? 20 A. Carpentry, plumbing. You know, I do a lot 21 of woodworking on the side. I have a little -- I 22 make signs for documented boats. 23 Q. When you say you do woodworking, you do 24 woodworking on the side, what type of work do you do? 25 A. Well, I refinish furniture, build furniture,</p>

3 (Pages 6 to 9)

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<p>1 bookcases, you know, what anybody would want.</p> <p>2 Q. Do you ever do that type of work out of your</p> <p>3 house?</p> <p>4 A. That's all done out of my house.</p> <p>5 Q. Do you have a wood shop in your house?</p> <p>6 A. Yes, I do.</p> <p>7 Q. Would you describe to Mr. Tichenor what you</p> <p>8 have in terms of equipment that you use as part of</p> <p>9 your profession at your home?</p> <p>10 A. Okay. Well...</p> <p>11 Q. Generally speaking.</p> <p>12 A. Actually, my basement in my house is</p> <p>13 dedicated to a wood shop, and I've got all my tools</p> <p>14 and I have, what, routers, planers, table saws, you</p> <p>15 know, any hand tools that I would need for, you know,</p> <p>16 some carving and just, you know, all-purpose</p> <p>17 woodworking.</p> <p>18 Q. Do you also do the finish work of any</p> <p>19 projects that you're working on?</p> <p>20 A. On occasion, you know, for special trims or,</p> <p>21 say, a fireplace mantle, things like that.</p> <p>22 Q. And are you staining that wood or painting</p> <p>23 it or both?</p> <p>24 A. Both.</p> <p>25 Q. And do you also do that out of your</p>	<p>1 is -- that's probably only about 100 yards away.</p> <p>2 Q. From the standpoint of your business, would</p> <p>3 you explain to Mr. Tichenor what concerns you have</p> <p>4 regarding the proposed quarry project.</p> <p>5 A. Well, as far as my business, it would be any</p> <p>6 dust or things that might be in the air to, you know,</p> <p>7 ruin my finishes or paint or any kind of finishes</p> <p>8 that I would do on a project.</p> <p>9 Q. Any estimate as to how much time you spend</p> <p>10 doing that type of work where you're located outside</p> <p>11 the home?</p> <p>12 A. Well, I would say in the last ten years I've</p> <p>13 made anywhere from 9,000 to \$18,000 on my side jobs.</p> <p>14 Q. And the side jobs would be those jobs in</p> <p>15 which you're doing the lacquer and the staining and</p> <p>16 the finish outside the house?</p> <p>17 A. And painting, yeah.</p> <p>18 Q. If there is dust blowing towards your home</p> <p>19 while you're working on one of these projects, what</p> <p>20 effect does that have, if any, on the work that</p> <p>21 you're doing?</p> <p>22 A. Well, you know, I couldn't do it because the</p> <p>23 dust would ruin the project. You know, nobody wants</p> <p>24 to have something with dust all in it. And if that</p> <p>25 would happen, you know, the sanding and the extra</p>
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<p>1 basement?</p> <p>2 A. Well, no. The staining I can kind of do in</p> <p>3 the basement, but when it comes to the lacquers and</p> <p>4 finishes, I can't do that in the house, so I have to</p> <p>5 go -- there's a place set up. My house is two level,</p> <p>6 walk-out basement, and out my back door is where I do</p> <p>7 all my finishing.</p> <p>8 Q. And you're talking about an area outside of</p> <p>9 the home?</p> <p>10 A. Yes, it is.</p> <p>11 Q. And that's on a patio of some type?</p> <p>12 A. Well, it's just a level gravel right now.</p> <p>13 Q. The home itself, you've indicated it's</p> <p>14 approximately 200 yards from one corner of the</p> <p>15 proposed site; is that correct?</p> <p>16 A. Right.</p> <p>17 Q. The area in which you do the lacquer and</p> <p>18 some of the staining finish on the wood, where is</p> <p>19 that located in relation to the location of the</p> <p>20 proposed quarry?</p> <p>21 A. Well, it's -- you know, the house is 28 feet</p> <p>22 long, so it's in the back corner, I wouldn't say</p> <p>23 facing that property, but I'd say 100, 200, 250</p> <p>24 yards. But on the other side of me where the road --</p> <p>25 Wood River Road bends around is the gravel road which</p>	<p>1 labor on my part would be immense.</p> <p>2 Q. When you say "immense," would you describe</p> <p>3 to Mr. Tichenor what process you would have to go</p> <p>4 through to try to remediate whatever problem would</p> <p>5 have been caused by the dust coming onto the project</p> <p>6 you were working on.</p> <p>7 A. I would have to either strip the whole thing</p> <p>8 down and start over or sand it to the best -- you</p> <p>9 know, depending on what -- how bad the particles that</p> <p>10 got into the finish.</p> <p>11 Q. Do you have some concern that dust would</p> <p>12 also get into the house on projects, in effect</p> <p>13 projects you're working on inside the basement?</p> <p>14 A. Well, yeah. You know, basically when dust</p> <p>15 gets into the house and it gets into your system, it</p> <p>16 blows through the whole house, and unless you keep</p> <p>17 the doors and windows closed, you can't, you know --</p> <p>18 and there's problems with that, where -- I don't have</p> <p>19 any problems with cars, but if there's more than one</p> <p>20 big truck come through, then the dust is a problem at</p> <p>21 my house.</p> <p>22 Q. If you could, would you explain to Mr.</p> <p>23 Tichenor how you go about bidding one of these side</p> <p>24 jobs that you've described. How do you figure out</p> <p>25 what the cost is going to be to the customer or</p>

4 (Pages 10 to 13)

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<p>1 client?</p> <p>2 A. I figure materials, and then I go through</p> <p>3 and figure, well, this is going to take me this long,</p> <p>4 this will take me this long. A lot of my jobs are</p> <p>5 done by the hour, so, you know -- I love bid jobs</p> <p>6 because I make a whole lot more money, but they</p> <p>7 understand that I work mostly by the hour, and that</p> <p>8 saves them money in the long run, too.</p> <p>9 Q. In those instances in which you would have</p> <p>10 to go back and try to correct a problem resulting</p> <p>11 from dust that migrated onto your property, would</p> <p>12 that affect any profit you made on the job?</p> <p>13 A. If that happened, that would be solely on</p> <p>14 me. I would have to take the whole brunt of</p> <p>15 something failing like that.</p> <p>16 Q. And when you say solely on you, that is time</p> <p>17 and effort that you would not bill back to your</p> <p>18 customer; is that correct?</p> <p>19 A. No, I wouldn't.</p> <p>20 Q. And, in fact, in those instances, would you</p> <p>21 potentially lose money on this project?</p> <p>22 A. Yes.</p> <p>23 Q. And it is your concern with this quarry that</p> <p>24 if, in fact, dust should migrate into the area in</p> <p>25 which you are working that it will affect your</p>	<p>1 along with sheet rock and MDF, which is a manmade</p> <p>2 wood, which on those two occasions I can wear</p> <p>3 respirators, but when it comes to the asphalt, you</p> <p>4 know, the doctor told me just don't go there. You</p> <p>5 know, when I go down the highway when they're doing</p> <p>6 that, he says, just turn the air-conditioner on and</p> <p>7 that should stop it.</p> <p>8 Q. From the standpoint of your income, it is</p> <p>9 made primarily from the work you do as a</p> <p>10 subcontractor and the side jobs; is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Do you have any other source of income?</p> <p>13 A. No.</p> <p>14 Q. Over the last 20 years --</p> <p>15 A. Well, I take that back. I do get child</p> <p>16 support.</p> <p>17 Q. Over the last 20 years, has your woodworking</p> <p>18 business and the performance of these side jobs been</p> <p>19 your primary source of income?</p> <p>20 A. Half of it. You know, I have about four or</p> <p>21 five big people that I do a lot of work for. You</p> <p>22 know, when they find out I get slowed down,</p> <p>23 somebody's always calling to ask for something done.</p> <p>24 Q. You're saying half of -- the side jobs would</p> <p>25 be half of it?</p>
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<p>1 livelihood in the negative sense?</p> <p>2 A. Most definitely.</p> <p>3 Q. Do you have any other concerns other than</p> <p>4 the impact it could have on your woodworking</p> <p>5 business? And I'm talking about the proposed quarry</p> <p>6 site.</p> <p>7 A. Well, of course, you know, with the health,</p> <p>8 you know, my son riding his bicycle, because he's --</p> <p>9 he'll be 12 years old this next year and he won't be</p> <p>10 able to go to the day care, YMCA day care anymore,</p> <p>11 they cut it off, so he'll have to ride the bus home.</p> <p>12 Of course, then my sister and brother and my mom and</p> <p>13 dad, his grandparents, all live on the same road,</p> <p>14 which, you know, as long as he tells me where he's</p> <p>15 going and calls when he gets there, he's free to ride</p> <p>16 his bicycle to those places.</p> <p>17 Q. And so I understand your testimony, your</p> <p>18 concern is that you have some concerns about your</p> <p>19 son's safety riding his bicycle up and down Wood</p> <p>20 River Road when the trucks would be traveling that</p> <p>21 road?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have any other concerns?</p> <p>24 A. And I have a problem with the blacktop</p> <p>25 pavement. You know, it gives me sinus headaches,</p>	<p>1 A. The side jobs is probably half of my</p> <p>2 business.</p> <p>3 Q. And if, in fact, you would be impacted in</p> <p>4 your ability to perform that work, that would affect</p> <p>5 your livelihood, correct?</p> <p>6 A. Yes, it would.</p> <p>7 Q. It would also affect your ability to support</p> <p>8 both yourself and your son who lives with you?</p> <p>9 A. Yes, it would.</p> <p>10 MR. MCGOVERN: I don't have anything</p> <p>11 further, Mr. Tichenor.</p> <p>12 HEARING OFFICER: Mr. Mauer, do you</p> <p>13 wish to call this witness on behalf of the Joint</p> <p>14 Board?</p> <p>15 MR. MAUER: No questions, your Honor.</p> <p>16 HEARING OFFICER: No questions? Mr.</p> <p>17 Brownlee, are you conducting cross-examination for</p> <p>18 Applicant?</p> <p>19 MR. BROWNLEE: Yes.</p> <p>20 HEARING OFFICER: Proceed.</p> <p>21 EXAMINATION</p> <p>22 QUESTIONS BY MR. BROWNLEE:</p> <p>23 Q. I'm going to call you Mr. Z, if it's okay.</p> <p>24 I can't get your name quite right. My name is</p> <p>25 Richard Brownlee. I'm an attorney for Magruder</p>

5 (Pages 14 to 17)

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<p>1 Limestone Company, Inc., which is the Applicant in 2 this process. I've just got a few questions. 3 You stated that your -- the total income 4 over the last ten years has been how much generated 5 by this side work? 6 A. Well, the lowest I've ever made was about 7 \$9,000, and the most I've ever made was about 18. 8 Q. And that's a year? 9 A. Yes. 10 Q. And so between the 9 and the 18, that's, 11 either one, about half of your income for a year? 12 A. Pretty close, yes. 13 Q. And regarding this basement shop you have, 14 do you have an internal full system vacuum with that 15 shop? 16 A. I have a vacuum for dust. 17 Q. Just -- and that's on the lathes and saws 18 and stuff like that? 19 A. Yes. Mostly routing. 20 Q. Okay. And that helps you control that, I'm 21 assuming? 22 A. Yes. 23 Q. Where does it vent? 24 A. It's self-contained. 25 Q. Into a cannister?</p>	<p>1 Q. But you -- this has been a gravel road the 2 entire time you've lived there, correct? 3 A. Yes, it has. 4 Q. And would it help if this road were paved, 5 Wood River Road? 6 A. Well, yes, it would help in the dust part, 7 but then the people come through there would go a lot 8 faster in their vehicles. 9 Q. Okay. But I mean, the dust is your primary 10 concern for your shop and stuff? 11 A. As far as my business, yes. 12 Q. So if that was paved, that would be -- if 13 the County would pave it, it would be a great 14 advantage to your business in terms of worrying about 15 dust, right? 16 A. Well, when I moved in there, it was supposed 17 to be paved, but the money went into general fund for 18 Miller County, and of course when money goes into 19 general fund, you really don't see it. 20 Q. Would it help if the Applicant, if this 21 permit were granted -- 22 A. Well, that would certainly help with the 23 dust, yes. 24 Q. Are you aware that they've stated that they 25 would go ahead and pave that road out to Highway 54</p>
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<p>1 A. Into a big plastic bag that I empty when it 2 gets full. 3 Q. And you mentioned that -- you said one big 4 truck coming by can cause dust; is that correct? 5 A. Yeah. And, well, what I base that on is the 6 field dump truck that runs up and down the road 7 taking that excess from the sewer plant. 8 Q. And you've lived at that house now for -- 9 since 1987, haven't you? 10 A. Yes, I have. 11 Q. And that's been on a gravel road the entire 12 time? 13 A. Yes. 14 Q. Has this gravel road that's been there for 15 the 20 years you've lived there caused problems 16 already by this truck you mentioned? 17 A. No. 18 Q. Do you have any idea about any -- well, you 19 mentioned this truck and the traffic. I assume it 20 must have been some problem. 21 A. Well, if I remember correctly, that truck -- 22 because it has really wide tires, and it does, but 23 then if one dump truck comes by, it really doesn't, 24 you know, affect too bad, but if two come in at the 25 same time, that's enough dust to come up to my house.</p>	<p>1 if the permit were granted? 2 A. I was not aware of that, no. 3 Q. And your son, he's been -- I mean, if this 4 permit's not granted, he's still going to be riding 5 on a gravel road out there, correct? 6 A. If the permit is granted? 7 Q. Yeah. 8 A. No. I won't let him. 9 Q. And yet -- do you know how much truck 10 traffic will be generated by this quarry? 11 A. Well, the only thing I can go off is LLCI 12 used to have a quarry over across the river, a lot of 13 trucks in and out of there, and that's kind of just 14 me being around those kind of things is where I base 15 my opinion. 16 Q. And were you living there when the Hudson 17 Hollow permit was granted? 18 A. Which one is that? 19 Q. That's the quarry that exists right next to 20 the sewer plant, the APAC quarry. 21 MR. MAUER: I'm going to object to 22 the extent that that assumes facts not in evidence, 23 that there is any quarrying going on. 24 MR. BROWNLEE: I didn't say there was 25 quarrying.</p>

6 (Pages 18 to 21)

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<p>1 Q. (By Mr. Brownlee) Are you aware there is a 2 permitted quarry -- 3 MR. MAUER: I made an objection. I 4 understood him to say a quarry that exists, was the 5 question, and I'm objecting to that as facts not in 6 evidence. 7 HEARING OFFICER: All right. Let's 8 address the Hudson Hollow APAC quarry. Mr. Brownlee, 9 can you cite me anything in the rules and regulations 10 of the statute whereby the Commission is required to 11 grant your permit, the permit for your client, 12 because the Hudson Hollow quarry was permitted? 13 MR. BROWNLEE: I don't think there's 14 a regulation to that under the statute, but I think 15 it's something the trier-of-fact can take into 16 consideration in terms of whether if they've granted 17 one, the precedential value of granting another one 18 right next to it. I mean, to grant one and deny one 19 to me is something that might be argued later on and 20 something that you as the judge may have to address. 21 HEARING OFFICER: All right. 22 Mr. Mauer, is there any basis on which the Joint 23 Board is arguing that somehow the granting of the 24 permit to APAC in some way addresses the issue of 25 health and safety with regard to Magruder's</p>	<p>1 conclusion was, Mr. Mauer, as you've stated, that the 2 APAC quarry, the Hudson Hollow quarry, has no 3 relevance. If it had been operational, if APAC had 4 come in there and taken that hogback down, by 5 whatever means, I think it clearly would be relevant, 6 but I don't think we need to spend time asking 7 witnesses about that or determining to put into the 8 record evidence that it now has been terminated and 9 it's not going to be quarried. 10 Mr. Brownlee, I understand your argument. 11 It's basically, well, if it's sauce for the goose, 12 it's sauce for the gander, and as much as that may be 13 a nice homespun saying, it has no legal precedence as 14 far as I can determine from -- from my research as 15 far as the rules and regulations are concerned. And 16 so consequently, I would be making no final order 17 recommendation to the full Commission that because of 18 the existence of APAC that in any way that this 19 quarry should be permitted because of that, and it 20 simply is not a factor. So with that said, we simply 21 don't need to address APAC any further in this 22 proceeding. 23 MR. BROWNLEE: Okay. Well, I 24 assume -- 25 HEARING OFFICER: I didn't ask you,</p>
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<p>1 application? 2 MR. MAUER: I'm sorry. I don't think 3 I understood. 4 HEARING OFFICER: Are you making any 5 claim that the existence of that APAC quarry, permit, 6 somehow indicates that this permit shouldn't be 7 granted? Is there anything that ties it? 8 MR. MAUER: I don't see how Hudson 9 Hollow and this permit are connected at all. They 10 are apples and oranges. I mean, you're talking about 11 a 15-acre site that was a part of a 48-acre site 12 application as compared to a 205-acre site. 13 HEARING OFFICER: I understand all 14 that. 15 MR. MAUER: But the purpose of my 16 objection at this point was simply the suggestion 17 that there is a quarry that is existing at this point 18 in time. 19 HEARING OFFICER: I understand. I 20 understand. 21 MR. MAUER: And there's been no 22 evidence of that. 23 HEARING OFFICER: I granted some 24 leeway in the March hearing on questioning on this. 25 I have gone over this prior to this time, and my</p>	<p>1 Mr. Duggan, but do you wish to chime in, or 2 Mr. McGovern, do you? 3 MR. MCGOVERN: My objection would 4 only be to relevance. 5 HEARING OFFICER: Mr. Duggan, since 6 you're the attorney for the Respondent, if the 7 Respondent somehow thinks that APAC needs to be 8 considered in this, I'll listen to the arguments, 9 but... 10 MR. DUGGAN: Barring a ruling by the 11 Hearing Officer that it's not at all relevant, I 12 would anticipate that Larry Coen, if asked, would 13 testify that he would not be able to justify a 14 unilateral recommendation to deny the Magruder permit 15 in light of the fact that he had approved a permit 16 for APAC, for what that's worth. 17 HEARING OFFICER: Notwithstanding 18 that, the approval of the APAC permit never went 19 before the Land Reclamation Commission as far as -- 20 at a formal public hearing to contest it, did it? 21 MR. DUGGAN: It did not because there 22 was no contest of anything in the permit. So the 23 issue of health, safety or livelihood was not 24 formally raised. 25 HEARING OFFICER: Okay. So we have</p>

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<p style="text-align: right;">Page 26</p> <p>1 no precedent from that -- from that permit, 2 notwithstanding Mr. Coen might testify, as you have 3 indicated, that that issue was -- it wasn't broached 4 in that proceeding. 5 MR. DUGGAN: No precedent on the 6 basis of -- 7 MR. BROWNLEE: If I could add, my 8 question is going to be very limited. My question 9 quite simply is going to be, are you aware of that 10 quarry with your concerns about dust and did you do 11 any protests or challenge it, and his answer would be 12 no, and obviously he is in this particular case. 13 There are two quarries right next to each other. 14 That's the limitation of my question towards that. I 15 wasn't going to go into the whole process again. 16 HEARING OFFICER: I understand, and 17 that's part of what was developed previously with Mr. 18 McGovern's witnesses at the March hearing, that no, 19 they apparently chose not to object. And there are 20 various reasons and motivations for that which we 21 simply don't need to address. So do you have any 22 further questions of the witness, Mr. Brownlee? The 23 objection is sustained. 24 MR. BROWNLEE: I did want to make a 25 note. In your order of January 28th, you stated that</p>	<p style="text-align: right;">Page 28</p> <p>1 HEARING OFFICER: Mr. Duggan, did you 2 have any questions? 3 MR. DUGGAN: No. 4 HEARING OFFICER: Okay. Redirect? 5 EXAMINATION 6 QUESTIONS BY MR. MCGOVERN: 7 Q. The concerns that you have testified to 8 regarding dust, you are concerned not only about dust 9 that would originate from Wood River Road but also 10 the quarry itself, correct? 11 A. Correct. 12 Q. And when you were testifying earlier about 13 migration of dust, you were considering also dust 14 that could come from the quarry operation? 15 A. Yes, I was. 16 MR. MCGOVERN: I don't have anything 17 further. 18 HEARING OFFICER: Recross on that 19 point, Mr. Brownlee? 20 EXAMINATION 21 QUESTIONS BY MR. BROWNLEE: 22 Q. In that regard, do you know where the actual 23 quarry operation is going to be in relation to the 24 overall site, that is, where they're going to start 25 blasting and crushing and mining?</p>
<p style="text-align: right;">Page 27</p> <p>1 any proffered testimony and documents from the 2 Individual Petitioners on the matters of noise, 3 pollution, traffic, dust outside the mining site, 4 blasting activities, property valuation, potential 5 impact on businesses will only be received to 6 maintain the record as an offer of proof and not as 7 evidence upon which a decision could be rendered on 8 the underlying issue of granting or denying the 9 requested permit? 10 HEARING OFFICER: Yes, sir. 11 MR. BROWNLEE: Thank you. 12 Q. (By Mr. Brownlee) One other question. Now, 13 you said your little spray area that you use is out 14 in the back of your house? 15 A. Yes. 16 Q. And that's on a gravel area? 17 A. Well, it's gravel, but when I do that, I 18 have tarps that I put down. 19 Q. Oh, okay. 20 A. Just like I would in a house to cover any 21 cabinetry or whatever that didn't need to get it. 22 MR. BROWNLEE: I have nothing else. 23 Thank you. 24 MR. MCGOVERN: Just one last 25 question. I'm sorry. I forgot about --</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Well, my understanding is that, you know, 2 they have 100 years to do this and they can do 3 whatever they want. That's my understanding. 4 Q. Well, you and I probably won't be there when 5 it gets to that point. 6 A. Well, but my kids will be. 7 MR. BROWNLEE: All right. Thank you. 8 HEARING OFFICER: Any further 9 redirect? 10 MR. MCGOVERN: Nothing further. 11 HEARING OFFICER: Thank you. The 12 Hearing Officer has no questions. You're dismissed. 13 MR. MCGOVERN: Nothing further, Mr. 14 Tichenor. 15 HEARING OFFICER: That concludes 16 presentation on behalf of the Individual Petitioners. 17 Let me just inquire, Mr. McGovern. At the 18 March 24th hearing, Mr. Atkisson identified MP-1, 19 which is the quarry map. You wish to offer that into 20 evidence? 21 MR. MCGOVERN: Yes. 22 HEARING OFFICER: Is there any 23 objection to that? It was identified by 24 Mr. Atkisson, as well as each of the other witnesses. 25 MR. MCGOVERN: Correct.</p>

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<p>1 HEARING OFFICER: Is there any 2 objection? No objection? It is received. 3 Then MP-2 are the photographs of 4 Mr. Atkisson's property. They were identified by 5 him. Those are being offered into evidence. Any 6 objections to those photographs? Those are the four 7 or five photographs of the construction of the 8 swimming pool, existing home, the clubhouse. MP-2? 9 MR. BROWNLIE: No. No. No. 10 HEARING OFFICER: All right. No 11 objection. They are received. It is received. I'm 12 sorry. 13 MP-3 are the pages out The Trailer Life 14 Directory, and those were identified by Ms. Stockman. 15 Those are being offered. Any objection? 16 MR. BROWNLIE: We objected on a 17 hearsay basis on that. 18 MR. MCGOVERN: We already argued 19 that, Mr. Tichenor. 20 HEARING OFFICER: Yes. I ruled on 21 that, and the objection -- the objection was 22 overruled, and the exhibit is admitted. 23 Now, MP-4, this is a September 20th letter 24 to Mr. and Mrs. Stockman from the director of sales 25 at Trailer Life Directory. Ms. Stockman did not</p>	<p>1 not offered. All right. I assume the other 2 documents which you have listed as exhibits are 3 documents that you're going to use on 4 cross-examination? 5 MR. MCGOVERN: That's correct. 6 HEARING OFFICER: All right. Very 7 good. Thank you, Mr. McGovern. 8 With that, we will take a recess to 9 discuss scheduling. And so with that, we are in 10 recess for about ten minutes or whenever we get done, 11 and we're off the record. 12 (Brief recess.) 13 HEARING OFFICER: We're back on the 14 record. I've written on the board the dates that I 15 have available after May 23rd and into June. And I 16 realize it's a limited list. Mr. Brownlee suggested 17 that by Wednesday we try to everybody check their 18 calendars, see what you've got on your dockets and 19 see what, if any, of those days that we can work in. 20 Notice that the date on the 30th I put it, what, from 21 9:00 to 2:00? Yep, 9:00 to 2:00. That's about as 22 late as I can go on that day. I have a commitment 23 out of town that I have to leave for. So see what 24 you can do with your calendars, and Wednesday we'll 25 try to tie down another day, half day, couple of</p>
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<p>1 identify that witness, according to the transcript. 2 MR. MCGOVERN: No, she did not. 3 HEARING OFFICER: You're not offering 4 it, then? 5 MR. MCGOVERN: Well, we would offer 6 the exhibit. 7 HEARING OFFICER: Exhibit MP-4 is 8 offered. Any objection? 9 MR. BROWNLIE: It would be the same 10 hearsay objection. 11 HEARING OFFICER: Any response? 12 MR. MCGOVERN: It was simply being 13 offered to demonstrate and corroborate the testimony 14 of Ms. Stockman. She's already testified to these 15 things. She's already testified to the way in which 16 the process is scored, The Trailer Life Directory. 17 The letter is just confirming that. 18 HEARING OFFICER: Mr. McGovern, you 19 and I read that letter differently. 20 MR. MCGOVERN: We had not offered it, 21 Mr. Tichenor, so we'll withdraw that. 22 HEARING OFFICER: Okay. I was going 23 to say, I don't have a foundation in my record. 24 MR. MCGOVERN: No, we did not. 25 HEARING OFFICER: All right. It is</p>	<p>1 days, and get this thing wrapped up. 2 All right. With that, Mr. Duggan, you're 3 recognized to call your first witness. 4 MR. DUGGAN: Mitch Roberts. 5 HEARING OFFICER: Mr. Roberts, will 6 you come forward and raise your right hand. 7 MITCHELL ROBERTS, 8 of lawful age, produced, sworn, and examined on 9 behalf of the Respondent, deposes and says: 10 HEARING OFFICER: Be seated. 11 EXAMINATION 12 QUESTIONS BY MR. DUGGAN: 13 Q. Please state your name. 14 A. Mitchell Wayne Roberts. 15 Q. Where do you work, Mr. Roberts? 16 A. Department of Natural Resources. 17 Q. What's your position? 18 A. Environmental Specialist III. 19 Q. And where do you perform your services? 20 A. The Lewis and Clark State Office Building, 21 Jefferson City. 22 Q. Which program? 23 A. Land Reclamation Program. 24 Q. How long have you been with the Land 25 Reclamation Program?</p>

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<p>1 A. Approximately a year and a half.</p> <p>2 Q. And what are your specific responsibilities</p> <p>3 in that program?</p> <p>4 A. At this time I do mine site inspections and</p> <p>5 permit review. That would be permit applications,</p> <p>6 expansions, new permits.</p> <p>7 Q. Are you familiar with the application that's</p> <p>8 the subject of the hearing today?</p> <p>9 A. Yes, I am.</p> <p>10 Q. How are you familiar with it?</p> <p>11 A. I was the one that did the review of the</p> <p>12 submitted application.</p> <p>13 MR. DUGGAN: I apologize to</p> <p>14 everybody. I had assumed this was already in the</p> <p>15 list of exhibits, but it is not. We're only going to</p> <p>16 offer a couple of exhibits.</p> <p>17 HEARING OFFICER: All right.</p> <p>18 MR. DUGGAN: And I need you to mark</p> <p>19 it. Or you to mark it, sir.</p> <p>20 MR. MAUER: Is that the application,</p> <p>21 Tim?</p> <p>22 MR. DUGGAN: Yep.</p> <p>23 MR. MAUER: I think it's in Brian's</p> <p>24 No. 5. I think it's MP-5. There's a cover letter</p> <p>25 and...</p>	<p>1 correctly on here, make sure that the proper fees had</p> <p>2 been paid and bonding had been submitted, look at the</p> <p>3 mine plan to review it to make sure that the</p> <p>4 post-mining land use was described properly per</p> <p>5 regulations and that it was a suitable use of the</p> <p>6 property, that the acreages were the same as far as</p> <p>7 on the application and the mine plan on the site</p> <p>8 information form. Review the site information form</p> <p>9 to make sure it also identifies the site location</p> <p>10 correctly. Actually, I don't see the site</p> <p>11 information form in here.</p> <p>12 HEARING OFFICER: The Hearing Officer</p> <p>13 made the site information form -- would be the third</p> <p>14 page of the document, Mr. Duggan, that you had</p> <p>15 originally brought?</p> <p>16 MR. ROBERTS: Yes.</p> <p>17 HEARING OFFICER: That's a one-page</p> <p>18 document; is that correct?</p> <p>19 MR. ROBERTS: Yes, sir.</p> <p>20 HEARING OFFICER: I believe you're</p> <p>21 correct, it does not appear in MP-5. Can we agree,</p> <p>22 then, that we will add the site information page, it</p> <p>23 is a single-page document? Do you have that, Mr.</p> <p>24 McGovern?</p> <p>25 MR. MCGOVERN: No, I do not.</p>
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<p>1 HEARING OFFICER: Yeah. Look at</p> <p>2 MP-5.</p> <p>3 MR. MAUER: I didn't mean to</p> <p>4 interrupt.</p> <p>5 HEARING OFFICER: No. No. I was</p> <p>6 just getting ready to say, I think I've seen this</p> <p>7 exhibit. There's a cover letter from Mr. McDonald as</p> <p>8 well as -- you may want to look at it to make sure</p> <p>9 that it is the same document that you're offering.</p> <p>10 MR. MCGOVERN: That's the one that we</p> <p>11 reviewed.</p> <p>12 Q. (By Mr. Duggan) I'll just show you MP-5 and</p> <p>13 ask you if that is the same exhibit that you had</p> <p>14 copied for me before taking the stand this morning?</p> <p>15 A. Yeah. In addition to what we were going to</p> <p>16 present is this letter to Mr. Reid from Mr. McDonald.</p> <p>17 Q. Okay.</p> <p>18 MR. DUGGAN: Then we don't have to</p> <p>19 add a new exhibit to the mix.</p> <p>20 Q. (By Mr. Duggan) If you will, Mr. Roberts,</p> <p>21 explain what your responsibilities were with respect</p> <p>22 to the Magruder application for this particular site.</p> <p>23 A. Okay. My responsibility would have been to</p> <p>24 review this permit application as far as the site</p> <p>25 location, make sure that the -- it's identified</p>	<p>1 HEARING OFFICER: Mr. Duggan is</p> <p>2 providing it to you. If there is no objection, then</p> <p>3 we will add that as a part of MP-5. And it will be</p> <p>4 added following the permit application fees and</p> <p>5 bonding worksheet, if that is all right, just in</p> <p>6 front of the mining plan. All right? Proceed.</p> <p>7 Q. (By Mr. Duggan) I'll let you find that for</p> <p>8 me in here and just pull it out and include it as</p> <p>9 described by the Hearing Officer.</p> <p>10 A. Okay. As I was stating, my responsibility</p> <p>11 with the permit application, review the application</p> <p>12 form, the fees and bonding worksheet, make sure the</p> <p>13 proper fees are paid, review the site information</p> <p>14 form which identifies the company, the legal</p> <p>15 description of the site, including the county, the</p> <p>16 acreage of the site, what commodity they're going to</p> <p>17 mine. And then it lists the landowner of the site</p> <p>18 and the mineral rights owner of the site, unless</p> <p>19 there is some lease agreement or the landowner owns</p> <p>20 both. Then the mine plan, to make sure that's</p> <p>21 correct, do the acreages all match up, again the</p> <p>22 post-mining land use is a suitable land use, and then</p> <p>23 the consent to entry to make sure that the landowner</p> <p>24 has signed that to give consent. Review the locator</p> <p>25 map and the detail map and bond information.</p>

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<p>1 After that, it would be to notify the</p> <p>2 Applicant -- if the application is complete, notify</p> <p>3 the Applicant to do a public notice, send the</p> <p>4 required certified letter to the governing board,</p> <p>5 whether the County or the City or any adjacent</p> <p>6 landowners that may apply in that situation.</p> <p>7 Q. Okay. Now, just to backtrack just a little</p> <p>8 bit, with respect to the application that you have</p> <p>9 just reviewed, what further investigation, if any,</p> <p>10 did you do beyond reviewing the paperwork that is in</p> <p>11 that exhibit?</p> <p>12 A. None, really. What is submitted as the</p> <p>13 application, there's, you know, a checklist. You</p> <p>14 check to see if the paperwork's there. Beyond that,</p> <p>15 there's no investigation.</p> <p>16 Q. Okay. And then you notified Magruder about</p> <p>17 the fact that you had determined it was a complete</p> <p>18 application?</p> <p>19 A. Yes. From what I reviewed, I determined</p> <p>20 that it was a complete application.</p> <p>21 Q. Okay. I will show you what has been marked</p> <p>22 Applicant's Exhibit No. 5. Can you identify that</p> <p>23 exhibit for us?</p> <p>24 A. Yeah. The front page appears that it is a</p> <p>25 copy of the green card which is from sending a</p>	<p>1 A. Yes, sir.</p> <p>2 Q. I'd like to show you Applicant's No. 6. Can</p> <p>3 you identify that document?</p> <p>4 A. Yeah. This is a cover letter along with a</p> <p>5 permit amendment application from Magruder Limestone</p> <p>6 at this site -- at the Lake Ozark quarry site with a</p> <p>7 map identifying the amended area and other required</p> <p>8 items.</p> <p>9 Q. When did you receive that?</p> <p>10 A. February the 8th, I believe.</p> <p>11 Q. Of this year?</p> <p>12 A. Yes, February of 2008.</p> <p>13 Q. What is the significance of that document?</p> <p>14 A. The significance of this document would be</p> <p>15 that they're adding acreage that would be bonded,</p> <p>16 which means this application identifies an additional</p> <p>17 90 acres that they would bond at the site, which</p> <p>18 means they could mine in that additional 90 acres if</p> <p>19 the permit was approved and the amendment was</p> <p>20 approved.</p> <p>21 Q. Is this 90 acres in addition to the acres</p> <p>22 identified in the original application?</p> <p>23 A. No. This would be 90 acres within the mine</p> <p>24 plan, the 205-acre mine plan identified in the</p> <p>25 original application.</p>
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<p>1 certified letter to the Miller County Commission from</p> <p>2 Magruder Limestone, and the second page. And the</p> <p>3 third page appears to be a copy of the letter that</p> <p>4 Dean McDonald had sent to the Miller County</p> <p>5 Commission.</p> <p>6 Q. How did you -- is that document part of the</p> <p>7 Department's file?</p> <p>8 A. Yes.</p> <p>9 Q. And how did it come to be part of the</p> <p>10 Department's file?</p> <p>11 A. After the Applicant is notified to run</p> <p>12 public notice, they have to send out letters to the</p> <p>13 governing board, as I had said, and then they have to</p> <p>14 send the Department proof that those letters have</p> <p>15 been sent via a green card and a copy of the sent</p> <p>16 letter.</p> <p>17 Q. Okay. Now I'll show you Applicant's</p> <p>18 Exhibit 4. Do you recognize that?</p> <p>19 A. Yes. It would be an affidavit of</p> <p>20 publication of the notice in the newspaper.</p> <p>21 Q. And did you include that in the Department's</p> <p>22 file in the same manner as Applicant's Exhibit 5?</p> <p>23 A. Yes, sir.</p> <p>24 Q. In other words, it was submitted to you by</p> <p>25 the Applicant; is that right?</p>	<p>1 Q. How many acres were bonded for purposes of</p> <p>2 the original application?</p> <p>3 A. 10 acres.</p> <p>4 Q. So we're talking about 100 acres at the</p> <p>5 point you reviewed this?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And what did your review of this amendment</p> <p>8 consist of?</p> <p>9 A. Well, the review of this is a little</p> <p>10 different since the permit hasn't actually been</p> <p>11 approved and such, so I looked at it to make sure</p> <p>12 that the legal description of the site was correct,</p> <p>13 that the fees were correct, which for an amendment,</p> <p>14 they had already paid their annual permit fee and</p> <p>15 they've already paid their site fee at their renewal</p> <p>16 for the year, so then they would have to pay an</p> <p>17 acreage fee for the amendment.</p> <p>18 And then I reviewed the maps to make sure</p> <p>19 that it included everything that needed to be there</p> <p>20 for the amendment. And with this being after</p> <p>21 August 28th, 2008, they had to also include a</p> <p>22 geological fee worksheet and fees for that. So I</p> <p>23 reviewed that also and said it looks like it could be</p> <p>24 approved if the permit was approved.</p> <p>25 Q. Okay. Now let's go back to the application,</p>

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<p>1 the original application that you have reviewed for</p> <p>2 this particular case. Can you explain what this</p> <p>3 application is for? How does it relate to any other</p> <p>4 operations by Magruder, for example?</p> <p>5 A. The application is for an expansion on their</p> <p>6 permit. The way it would relate to other Magruder</p> <p>7 sites is that it's simply listed on the same permit.</p> <p>8 It's just an additional site.</p> <p>9 Q. So what is the subject of an approval</p> <p>10 decision here is whether or not that new site should</p> <p>11 be added to an existing permit as an expansion of</p> <p>12 that permit?</p> <p>13 A. Correct.</p> <p>14 Q. Did you receive any additional information</p> <p>15 related to this particular application that you have</p> <p>16 not already seen this morning and talked about?</p> <p>17 A. Yes. There's -- there's some bonding</p> <p>18 documents that are not included with this amendment</p> <p>19 application. I have it right here.</p> <p>20 Q. Okay.</p> <p>21 A. For the amendment, they have to also submit</p> <p>22 bonding, and since this has been, you know, an</p> <p>23 expansion which was part of another permit</p> <p>24 application when this was submitted, the bonding was</p> <p>25 different then than the amendment and so we -- I've</p>	<p>1 forfeit the bond. Does the bond go to anything other</p> <p>2 than stabilizing the property?</p> <p>3 A. Not that I'm aware of. When the bond is</p> <p>4 forfeited, it goes into a fund for reclamation work</p> <p>5 at mine sites so that that land can be reclaimed,</p> <p>6 stabilized to, you know, some type of usable form.</p> <p>7 Q. Did you receive any additional maps related</p> <p>8 to this particular application beyond what you've</p> <p>9 seen in the exhibits in front of you?</p> <p>10 A. No.</p> <p>11 Q. Do you recall participating in a site visit</p> <p>12 in January of this year?</p> <p>13 A. Yes.</p> <p>14 Q. And do you recall a discussion about</p> <p>15 easements --</p> <p>16 A. Yes.</p> <p>17 Q. -- being -- existing on the property?</p> <p>18 A. Yes.</p> <p>19 Q. Did you request, or whether you requested or</p> <p>20 not, otherwise receive an updated map showing those</p> <p>21 easements?</p> <p>22 A. Yes, I did. It's part of this Applicant</p> <p>23 Exhibit No. 6, Page 4 in that.</p> <p>24 Q. Okay. What does that map reflect that was</p> <p>25 not reflected on the map that came in with the</p>
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<p>1 got -- there's bonding documents included in this</p> <p>2 original application that's MP-5; however, those --</p> <p>3 another expansion was approved for Magruder, so then</p> <p>4 the bonding had to be increased again. And then for</p> <p>5 the amendment they also increased the bonding, twice,</p> <p>6 I believe, to get it to where it should be if this</p> <p>7 permit is approved and 100 acres is bonded. And</p> <p>8 those are not all here.</p> <p>9 Q. Okay. What is the purpose of the bonding?</p> <p>10 A. The bonding is for the area where they can</p> <p>11 actually mine at that time on bonded acres. The</p> <p>12 purpose of the bond is if the company was to go</p> <p>13 bankrupt or such, then that bond is there as a fund</p> <p>14 for the Land Reclamation Program to have work done to</p> <p>15 reclaim the property.</p> <p>16 Q. And what does reclaiming the property</p> <p>17 consist of?</p> <p>18 A. It depends on the site. It could be</p> <p>19 numerous things. It would depend on what the site</p> <p>20 looked like when the bond was forfeited.</p> <p>21 Q. By reclamation -- let's assume that scenario</p> <p>22 just for the sake of background in this case, that at</p> <p>23 some point in this particular case the permit is</p> <p>24 approved and mining commences but is abandoned for</p> <p>25 financial reasons or other reasons and you have to</p>	<p>1 original application?</p> <p>2 A. It identifies a sewer easement and</p> <p>3 identifies an Ameren UE easement.</p> <p>4 Q. For the purposes of your responsibility to</p> <p>5 review the application for completeness, you have all</p> <p>6 the information you deem pertinent with respect to</p> <p>7 that request?</p> <p>8 A. Could you repeat that?</p> <p>9 MR. MCGOVERN: I'd just object. I'm</p> <p>10 sorry.</p> <p>11 HEARING OFFICER: State your</p> <p>12 objection.</p> <p>13 MR. MCGOVERN: I didn't understand</p> <p>14 the question. It was vague and ambiguous, would be</p> <p>15 my objection.</p> <p>16 HEARING OFFICER: Restate the</p> <p>17 question.</p> <p>18 Q. (By Mr. Duggan) For purposes of</p> <p>19 determination -- first of all, when did you first</p> <p>20 determine this application was complete?</p> <p>21 A. I believe it would have been the first part</p> <p>22 of May 2007.</p> <p>23 Q. Okay. But you received an amended map</p> <p>24 showing the easements sometime after you made that</p> <p>25 completeness determination; is that right?</p>

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<p>1 A. That's correct.</p> <p>2 MR. DUGGAN: I don't have any other</p> <p>3 questions for Mr. Roberts.</p> <p>4 HEARING OFFICER: Mr. Brownlee, do</p> <p>5 you wish to call this witness in support of the</p> <p>6 Applicant's case?</p> <p>7 MR. BROWNLEE: Yeah.</p> <p>8 HEARING OFFICER: Proceed.</p> <p>9 EXAMINATION</p> <p>10 QUESTIONS BY MR. BROWNLEE:</p> <p>11 Q. Mr. Duggan asked you, this is an expansion</p> <p>12 from the existing permit held by Magruder which I</p> <p>13 think is numbered 0086; is that not correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Which means it adds a new site to the other</p> <p>16 existing sites that they have permitted?</p> <p>17 A. That would be correct.</p> <p>18 Q. And when you examined this application, were</p> <p>19 you aware that Magruder was currently being regulated</p> <p>20 by the Land Reclamation Program and DNR?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And you said you had a checklist. That's</p> <p>23 something that DNR prepared; is that correct?</p> <p>24 A. It's something that the Land Reclamation</p> <p>25 Program --</p>	<p>1 A. Yes.</p> <p>2 Q. And at the bottom does it -- is there a</p> <p>3 Section D, Use of Land When Reclaimed?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And does that indicate that it would</p> <p>6 be developed for residential, industrial,</p> <p>7 recreational, 205 acres?</p> <p>8 A. Yes.</p> <p>9 Q. And at the top of that page when it talks</p> <p>10 about grading, does it address the issue of reclaimed</p> <p>11 topography?</p> <p>12 A. Yes.</p> <p>13 Q. And it says it will be used for commercial</p> <p>14 development, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And it goes on, "We will have created a</p> <p>17 large flat area that would be great for business,"</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. Now, let me ask you, this -- was it your</p> <p>21 understanding this was a 100-year permit?</p> <p>22 A. Yes.</p> <p>23 Q. And that means that it could be mined for</p> <p>24 100 years, but it also could be -- assume that they</p> <p>25 determined after ten years they wanted to do an</p>
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<p>1 Q. Land Reclamation, okay.</p> <p>2 A. -- has that the permit reviewers use, yes.</p> <p>3 Q. And when you made the initial determination</p> <p>4 of completeness, did you feel that everything on the</p> <p>5 checklist was created?</p> <p>6 A. Yes.</p> <p>7 Q. Was met? I'm sorry.</p> <p>8 A. Yes.</p> <p>9 Q. And regarding publication, when you checked</p> <p>10 that, did you feel that the legal requirements under</p> <p>11 the statute were met by the publication materials you</p> <p>12 received?</p> <p>13 A. Yes.</p> <p>14 Q. And when you reviewed the bond originally,</p> <p>15 was it -- did it meet the laws required by the</p> <p>16 regulations and statutes?</p> <p>17 A. Yes.</p> <p>18 Q. And on the post-mining land use in the</p> <p>19 application, did you review that?</p> <p>20 A. Yes.</p> <p>21 Q. And does it -- if you take a look at Page, I</p> <p>22 think it's 4 of the application, do you have that,</p> <p>23 sir?</p> <p>24 A. Page 4 of the mine plan?</p> <p>25 Q. Yeah. I'm sorry.</p>	<p>1 industrial commercial use, they could ask that it be</p> <p>2 closed and you'd reclaim it and then they could go on</p> <p>3 to another use; is that correct?</p> <p>4 A. It would have to be reclaimed, yes, and then</p> <p>5 it could be closed.</p> <p>6 Q. Okay. And do you understand that what --</p> <p>7 when you're required as an applicant in the year 2007</p> <p>8 to mention what it might be for development or future</p> <p>9 use that you might really not know what it's going to</p> <p>10 be in 20 or 30 years or 100 years?</p> <p>11 MR. MAUER: Objection. Calls for</p> <p>12 speculation.</p> <p>13 HEARING OFFICER: Overruled.</p> <p>14 A. Yes.</p> <p>15 Q. (By Mr. Brownlee) So if the choices on the</p> <p>16 form developed by the Land Reclamation is</p> <p>17 development, residential, industrial or recreational</p> <p>18 and you list 205 acres, that's their view that they</p> <p>19 want to reserve the right to have it for development</p> <p>20 for industrial, residential or recreational for the</p> <p>21 full 205 acres? That's what the permit says, the</p> <p>22 application says, doesn't it?</p> <p>23 MR. MAUER: I'm going to object, your</p> <p>24 Honor. Again it calls for speculation as to what</p> <p>25 their view was, how this witness would know what</p>

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<p>1 their view is.</p> <p>2 HEARING OFFICER: I believe the</p> <p>3 witness can testify to what the Applicant put in the</p> <p>4 application.</p> <p>5 MR. BROWNLEE: Exactly.</p> <p>6 MR. MAUER: That I agree to, but I</p> <p>7 didn't understand the question to be asking that.</p> <p>8 HEARING OFFICER: That's the way the</p> <p>9 Hearing Officer understood the question. It's a</p> <p>10 recitation of what's in the application.</p> <p>11 Q. (By Mr. Brownlee) So they've listed 205</p> <p>12 acres --</p> <p>13 HEARING OFFICER: Overruled.</p> <p>14 Q. (By Mr. Brownlee) -- for commercial</p> <p>15 development for use of land when reclaimed? It's on</p> <p>16 the application.</p> <p>17 A. Yes.</p> <p>18 Q. In your view, does that meet the</p> <p>19 requirements of the law?</p> <p>20 A. Yes.</p> <p>21 Q. Pardon me?</p> <p>22 A. Yes.</p> <p>23 Q. And regarding the issue of published notice,</p> <p>24 do you know how many legal newspapers are published</p> <p>25 in Miller County?</p>	<p>1 A. Yes.</p> <p>2 Q. And that would have been sometime in</p> <p>3 February of 2008?</p> <p>4 A. Correct.</p> <p>5 Q. During the application process, is it a</p> <p>6 normal operating procedure for the Department in</p> <p>7 reviewing the permit applications to request</p> <p>8 additional information or ask for clarification?</p> <p>9 A. Yes.</p> <p>10 Q. Is it done all the time?</p> <p>11 A. Not every time, no, but a lot of the time,</p> <p>12 yes.</p> <p>13 Q. And, in fact, in this case you asked for</p> <p>14 additional information, did you not?</p> <p>15 A. Correct.</p> <p>16 Q. And you were at the site meeting, I think it</p> <p>17 was in February of 2008?</p> <p>18 A. Correct.</p> <p>19 Q. And was there a discussion -- and, gosh, I</p> <p>20 hate to relive it, we were all there, but there was</p> <p>21 discussion about easements and whether they were</p> <p>22 required on maps. Do you recall hearing that or</p> <p>23 being involved in that?</p> <p>24 A. Yes.</p> <p>25 HEARING OFFICER: Mr. Brownlee, let</p>
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<p>1 A. No.</p> <p>2 Q. Did you check this one as to whether it was</p> <p>3 required for -- or it did meet the requirements for</p> <p>4 legal notice?</p> <p>5 A. That's the purpose of the affidavit of</p> <p>6 publication.</p> <p>7 Q. And isn't there a website, I think it's</p> <p>8 called CARES, that you can check the validity of</p> <p>9 legal notice?</p> <p>10 A. No. CARES is a mapping --</p> <p>11 Q. A mapping, okay.</p> <p>12 A. -- site, but there is a website that lists</p> <p>13 papers in the state of Missouri that are authorized</p> <p>14 to publish --</p> <p>15 Q. What's that?</p> <p>16 A. -- legal public notices. It's on my</p> <p>17 favorites. I don't know the actual address.</p> <p>18 Q. Did you check this one?</p> <p>19 A. Yes.</p> <p>20 Q. And did it meet the legal requirements for</p> <p>21 public notice in a newspaper?</p> <p>22 A. Yes.</p> <p>23 Q. Now, we've discussed -- and this has been</p> <p>24 deposited and discussed for hours. There was an</p> <p>25 amendment received by the LRC; is that correct?</p>	<p>1 me interrupt. Just for the record, the meeting was</p> <p>2 in January.</p> <p>3 MR. BROWNLEE: I'm sorry.</p> <p>4 Q. (By Mr. Brownlee) In January of 2008, you</p> <p>5 were at the meeting at the site?</p> <p>6 A. Yes.</p> <p>7 Q. And did you ask Magruder to resubmit some</p> <p>8 additional information showing those easements?</p> <p>9 A. Yes, as part of a permit amendment.</p> <p>10 Q. And was there a discussion also on the bond</p> <p>11 where there was a 10-acre on the original application</p> <p>12 located, like, adjacent to the sewer line?</p> <p>13 A. Repeat that.</p> <p>14 Q. Regarding the bond, you recall in the</p> <p>15 original application there was a 10-acre site located</p> <p>16 immediately adjacent to the sewer line?</p> <p>17 A. Correct.</p> <p>18 Q. And at the time we had the site visit, was</p> <p>19 there a discussion that that really wasn't the exact</p> <p>20 area that was going to be started, it was just put in</p> <p>21 the application to put 10 acres?</p> <p>22 MR. MAUER: I'm going to object, your</p> <p>23 Honor. Hearsay. He's relating a conversation that</p> <p>24 occurred in January. It's not on the record.</p> <p>25 HEARING OFFICER: Well, he was</p>

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<p>1 present at the meeting.</p> <p>2 MR. MAUER: He's still relating</p> <p>3 hearsay, what was said at this meeting. He's</p> <p>4 relating something that was told to him by an</p> <p>5 out-of-court declarant.</p> <p>6 HEARING OFFICER: Yeah, I understand</p> <p>7 that. I think it's a foundational question as to</p> <p>8 whether or not this witness heard that. I assume</p> <p>9 there's going to be a follow-up question to it. I'll</p> <p>10 hold on ruling whether or not this is just pure</p> <p>11 hearsay or whether it's a foundational question. So</p> <p>12 proceed.</p> <p>13 MR. MCGOVERN: If I may, Mr.</p> <p>14 Tichenor, the only objection I have is if it's a</p> <p>15 discussion in which you were involved in which this</p> <p>16 was -- was this argument being presented, if you</p> <p>17 participated in the discussion at all. If it was a</p> <p>18 discussion between simply a Magruder representative</p> <p>19 and Mr. Roberts, then I don't have the objection, but</p> <p>20 if this was some discussion in which there were legal</p> <p>21 ramifications of this case being discussed, I think</p> <p>22 it is an improper question.</p> <p>23 HEARING OFFICER: My recollection is</p> <p>24 I did not take part in, I did not hear a discussion</p> <p>25 or a request by a representative of Magruder to</p>	<p>1 it's kind of a hard thing to say who was there. Do</p> <p>2 you recall the 10 acres being discussed?</p> <p>3 A. It was brought up, yes.</p> <p>4 Q. And do you recall that that was not really</p> <p>5 where the mining was going to occur; it could be</p> <p>6 somewhere else?</p> <p>7 MR. MAUER: Now I'm going to object,</p> <p>8 your Honor. This assumes facts not in evidence, and</p> <p>9 he's clearly going to be relating --</p> <p>10 HEARING OFFICER: Well, actually,</p> <p>11 that discussion did take place in my hearing, it took</p> <p>12 place in your hearing. It took place over on the</p> <p>13 easement. We were standing there and we were looking</p> <p>14 up at the hogback, I remember that, and it was</p> <p>15 pointed out the bonding really isn't on the 10 acres.</p> <p>16 MR. MAUER: But there's no evidence</p> <p>17 on the record about that, and this witness, if he's</p> <p>18 going to be asked to testify about it, he's just</p> <p>19 going to be relating hearsay.</p> <p>20 MR. BROWNLEE: Well, this is the</p> <p>21 problem: We have a witness that's going to testify</p> <p>22 to all of this, Mr. McDonald will.</p> <p>23 HEARING OFFICER: A certain amount of</p> <p>24 hearsay is allowable on a foundational question, and</p> <p>25 so I'm granting some leeway to go on, although what I</p>
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<p>1 Mr. Roberts. If it was discussed while I was in</p> <p>2 earshot or whatever, I didn't hear it.</p> <p>3 MR. MCGOVERN: Fair enough.</p> <p>4 HEARING OFFICER: And just so I'm</p> <p>5 clear, Mr. Brownlee, what I understand you're asking</p> <p>6 is on -- and I believe it was January 28th when we</p> <p>7 met at the site. We met first at City Hall, and</p> <p>8 there was discussion there. Mr. McGovern was on on a</p> <p>9 phone conference. We then made our way to the site,</p> <p>10 and your questioning relates to a discussion that</p> <p>11 this witness had at the site with a representative of</p> <p>12 Magruder?</p> <p>13 MR. BROWNLEE: Correct. I'll follow</p> <p>14 up with that.</p> <p>15 HEARING OFFICER: All right.</p> <p>16 Q. (By Mr. Brownlee) At that site visit, do</p> <p>17 you recall discussing with Mr. McDonald the issue of</p> <p>18 the 10-acre bond that was shown on the original</p> <p>19 application?</p> <p>20 A. Did I personally talk to him about that?</p> <p>21 No. It was brought up at the site visit.</p> <p>22 Q. Okay. You recall --</p> <p>23 A. It wasn't one-on-one myself and Mr. McDonald</p> <p>24 talking about it.</p> <p>25 Q. Well, all the lawyers were there, too, so</p>	<p>1 hear from this witness, Mr. Brownlee, is that he</p> <p>2 wasn't part of a discussion relative to supplementing</p> <p>3 the application.</p> <p>4 Q. (By Mr. Brownlee) Well, did you and</p> <p>5 Mr. McDonald after this meeting have a discussion</p> <p>6 about resubmitting some additional information</p> <p>7 regarding the bonding?</p> <p>8 A. On that day?</p> <p>9 Q. No. Later.</p> <p>10 A. Yes. We had a phone conversation.</p> <p>11 Q. And is that what created the additional 90</p> <p>12 acres being submitted?</p> <p>13 A. What created the --</p> <p>14 Q. The discussion you and Mr. McDonald had.</p> <p>15 A. Mr. McDonald called and said he was going to</p> <p>16 submit an amendment for additional acreage to be</p> <p>17 bonded.</p> <p>18 Q. Did you ask him why, or not?</p> <p>19 A. No.</p> <p>20 Q. Okay. On the checklist that DNR has, are</p> <p>21 there easements located on that checklist of any</p> <p>22 sort?</p> <p>23 A. I don't believe so.</p> <p>24 Q. The public notice that went out, it</p> <p>25 reflected 205 acres of a mine plan, correct?</p>

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<p>1 A. Correct.</p> <p>2 Q. Reflected that in Miller County, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And the certain range and not a total legal</p> <p>5 description, but it was described where it was</p> <p>6 located, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And when any of the materials that were</p> <p>9 resubmitted later on after publication, was any of</p> <p>10 that changed, that is, was the acreage changed?</p> <p>11 A. As far as the mine plan?</p> <p>12 Q. Uh-huh.</p> <p>13 A. No.</p> <p>14 Q. Was the location changed?</p> <p>15 A. No.</p> <p>16 Q. Was anything else resubmitted that would</p> <p>17 have -- would be a change that would be required to</p> <p>18 be republished?</p> <p>19 A. No.</p> <p>20 Q. In your view?</p> <p>21 A. No.</p> <p>22 MR. BROWNLEE: That's about all I</p> <p>23 have. Thank you.</p> <p>24 HEARING OFFICER: Mr. McGovern,</p> <p>25 cross-examination?</p>	<p>1 application itself, correct?</p> <p>2 A. Correct.</p> <p>3 Q. You're not, then, going out and doing an</p> <p>4 investigation to determine whether or not the</p> <p>5 description of the site is accurate. You're not</p> <p>6 doing research to determine whether or not there's</p> <p>7 leases on the property or anything like that,</p> <p>8 correct?</p> <p>9 A. Not completely correct. We do do research</p> <p>10 on the legal description for the purpose of public</p> <p>11 notice. That way we know, okay, that is correct</p> <p>12 description of the site and that would be correct as</p> <p>13 listed for the notice.</p> <p>14 Q. And what you're referring to is the legal</p> <p>15 description contained within the notice tells me</p> <p>16 township and range, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And that's what you're checking?</p> <p>19 A. It tells you township, range and section.</p> <p>20 Q. Correct.</p> <p>21 A. And that's what I'm checking, yes.</p> <p>22 Q. And you did that -- I think you told us</p> <p>23 previously in deposition you can go to a website I</p> <p>24 think University of Missouri puts out and you can</p> <p>25 verify the accuracy of the description provided; is</p>
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<p>1 MR. MCGOVERN: Thank you.</p> <p>2 EXAMINATION</p> <p>3 QUESTIONS BY MR. MCGOVERN:</p> <p>4 Q. Mr. Roberts, why don't we pick up with some</p> <p>5 of the questions where Mr. Duggan left off. One, if</p> <p>6 you could take us through again briefly the</p> <p>7 application process. It's going to begin with a</p> <p>8 party submitting an application much like in the</p> <p>9 exhibit you've already testified to, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And once that happens, you've indicated that</p> <p>12 you simply go through a checklist to determine</p> <p>13 whether or not that application is complete; is that</p> <p>14 accurate?</p> <p>15 A. That's accurate.</p> <p>16 Q. You're not doing any due diligence to</p> <p>17 determine whether or not the information submitted is</p> <p>18 either accurate or complete; isn't that correct?</p> <p>19 A. Repeat that.</p> <p>20 Q. Certainly. When you received the</p> <p>21 application, you are looking at the paper that the</p> <p>22 application is contained on and you are going through</p> <p>23 your checklist to ensure that all of the information</p> <p>24 that is required by the regulations or statutes and</p> <p>25 is included on your checklist is included within the</p>	<p>1 that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And I think we talked about in your</p> <p>4 deposition that a lay person looking at that could</p> <p>5 only determine where that location is if, in fact,</p> <p>6 they had access to a map which gave them township,</p> <p>7 range and section; is that correct?</p> <p>8 A. I believe that in the deposition I responded</p> <p>9 that CARES is a website that anyone can go to.</p> <p>10 Q. Correct.</p> <p>11 A. So if they knew the legal description, they</p> <p>12 could type it in there and it would take them to that</p> <p>13 legal description as far as an aerial photo or</p> <p>14 whatever option they chose.</p> <p>15 Q. And that assumes that the lay person would</p> <p>16 know that this CARE website exists, correct?</p> <p>17 A. That does assume that.</p> <p>18 Q. The publication itself does nothing more</p> <p>19 than tell people, businesses, that there is a</p> <p>20 proposed project at a site, and it gives you the</p> <p>21 total acreage and it gives you the location, correct?</p> <p>22 A. It should tell you the commodity that</p> <p>23 they're going to mine, but otherwise what you said is</p> <p>24 correct.</p> <p>25 Q. And if I wanted to find out the detail about</p>

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<p>1 reclamation or if I wanted to find out detail about</p> <p>2 what this project really entailed, a consumer or a</p> <p>3 lay person would have to make a Sunshine request to</p> <p>4 the DNR so that they could actually review the</p> <p>5 document submitted; isn't that accurate?</p> <p>6 A. That's accurate.</p> <p>7 Q. Otherwise, the only information that a</p> <p>8 person in the public is going to get relative to the</p> <p>9 publication process itself is going to be that</p> <p>10 information actually contained within the newspaper</p> <p>11 that publishes this, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Now, you've indicated in response to</p> <p>14 questions from Mr. Brownlee that there are occasions</p> <p>15 where permit applications are amended, there's new</p> <p>16 information provided, there's changes made; is that</p> <p>17 correct?</p> <p>18 A. Well, first of all, let's not use the word</p> <p>19 amended because that's an actual application is an</p> <p>20 amendment.</p> <p>21 Q. I agree.</p> <p>22 A. There are times when additional information</p> <p>23 is supplied, yes.</p> <p>24 Q. And I think that's a good clarification. So</p> <p>25 upon initial submittal, you may realize that maybe</p>	<p>1 okay, you can run public notice. Now, sometimes they</p> <p>2 may take the chance of not submitting an example to</p> <p>3 me beforehand, thinking that they had the correct</p> <p>4 information. Okay? So I don't always look at the</p> <p>5 exact notice that's going to be run before it's run</p> <p>6 but if it's incorrect and they have to run it again.</p> <p>7 In this case what you said is correct.</p> <p>8 Q. Now, once the publication appears in the</p> <p>9 paper, then by regulation people in the public have</p> <p>10 two options at that point. One is they could request</p> <p>11 a meeting?</p> <p>12 A. Correct.</p> <p>13 Q. And that would be a meeting with the</p> <p>14 Applicant, correct?</p> <p>15 A. It's a public meeting, correct.</p> <p>16 Q. And in this case we know Magruder rejected</p> <p>17 that request by some of the members of the public,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. And Magruder had every right to do that,</p> <p>21 didn't they?</p> <p>22 A. Correct.</p> <p>23 Q. The other thing that a consumer or a member</p> <p>24 of the public could do is request a hearing; is that</p> <p>25 correct?</p>
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<p>1 there's information not provided or maybe the</p> <p>2 Applicant wants to change something and so there are</p> <p>3 some changes that may take place to that original</p> <p>4 application after originally submitted; is that</p> <p>5 correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Now, just to walk us through the process,</p> <p>8 we've got the application as originally submitted.</p> <p>9 You conduct your review, and at some point you</p> <p>10 determine that it's complete or it's incomplete,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Just generally speaking of the process. If</p> <p>14 you determine complete, the next thing that's going</p> <p>15 to happen is you're going to have publication within</p> <p>16 the paper; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. You've indicated you'd check to make sure</p> <p>19 that it is, in fact, a legal publication accepted for</p> <p>20 this type of notice, and then the notice actually</p> <p>21 appears within the paper itself; is that correct?</p> <p>22 A. Kind of. A lot of times they will submit an</p> <p>23 example to me or to a reviewer of what they're going</p> <p>24 to put in the permit; however, what the step would be</p> <p>25 is I would send a letter to the operator saying,</p>	<p>1 A. That's correct.</p> <p>2 Q. And, in fact, the DNR makes a rather</p> <p>3 significant distinction between the two, and that is</p> <p>4 if I request a meeting, that only refers to the</p> <p>5 public meeting, as compared to if I say I would like</p> <p>6 a hearing, that would be the very hearing that we're</p> <p>7 participating in today; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And anyone who is trying to make a decision</p> <p>10 of whether or not they would like to do that would</p> <p>11 base that, one, upon the information provided in the</p> <p>12 public notice, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And, two, would be if they really wanted to</p> <p>15 take a look to see what this project entailed, they</p> <p>16 would file a Sunshine request with your Department</p> <p>17 and they could come down and actually review the file</p> <p>18 in its entirety; isn't that right?</p> <p>19 A. That's correct.</p> <p>20 Q. And by doing that, they would, among other</p> <p>21 things, have access to the application itself; isn't</p> <p>22 that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Now, we know the application itself has to</p> <p>25 include two separate and distinct maps; is that</p>

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<p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. One of which is the locator map which simply</p> <p>4 tells me where this particular site is located; is</p> <p>5 that right?</p> <p>6 A. Yes.</p> <p>7 Q. The second is a detailed map; is that</p> <p>8 correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And that detailed map is going to include</p> <p>11 much more specific information; isn't that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And one of the things that that detailed map</p> <p>14 should include is the location of easements; isn't</p> <p>15 that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And the reason that you would include that</p> <p>18 information is so that a member of the public looking</p> <p>19 and conducting a review of this particular project</p> <p>20 would know where, or if there are easements on the</p> <p>21 property, where they're located and what type of</p> <p>22 easements there are; is that correct?</p> <p>23 A. Repeat that.</p> <p>24 Q. Certainly. It was a bad question. That</p> <p>25 detailed map would include those easements so that</p>	<p>1 were on the map unless they did a Sunshine request</p> <p>2 and had the map.</p> <p>3 Q. I understand. But that's a decision they</p> <p>4 would have to make for themselves. With that</p> <p>5 information, people looking at those particular</p> <p>6 easements on the map could then decide for themselves</p> <p>7 whether they wanted to request a meeting to get more</p> <p>8 information or to actually request a hearing to</p> <p>9 challenge this application; is that correct?</p> <p>10 A. They could use that to make a decision to</p> <p>11 request a hearing.</p> <p>12 Q. Sure.</p> <p>13 A. But that has no basis on whether or not the</p> <p>14 hearing would be granted.</p> <p>15 Q. I understand. And as I understand it, the</p> <p>16 public has only so many days during which they can</p> <p>17 request a hearing such as one that we're</p> <p>18 participating in today from the time that the meeting</p> <p>19 takes place; is that correct?</p> <p>20 A. From the time that the meeting takes place?</p> <p>21 Q. I'm sorry. From the time of publication?</p> <p>22 A. Yeah. The public -- they have throughout</p> <p>23 the publication period and then a 15-day period after</p> <p>24 the last -- the final printing in the newspaper.</p> <p>25 Q. So if an individual wants to file a request</p>
Page 67	Page 69
<p>1 members of the public deciding whether or not they</p> <p>2 would request a meeting or an actual hearing such as</p> <p>3 we're in today would have access to that information,</p> <p>4 they could see where those easements are located and</p> <p>5 they could determine for themselves whether or not</p> <p>6 they would be affected; is that correct?</p> <p>7 A. Okay. You're stating that the public would</p> <p>8 see those easements and think that they are going to</p> <p>9 be affected by that and --</p> <p>10 Q. Here's all I'm asking. I'll ask it again.</p> <p>11 A. Okay.</p> <p>12 Q. You've indicated one of the reasons that you</p> <p>13 would include the easements on that detailed map is</p> <p>14 so people who might be reviewing this project would</p> <p>15 at least know where those easements are located,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. It would also provide information to people</p> <p>19 who might be affected if those easements or the</p> <p>20 utilities running through those easements are</p> <p>21 impacted in any way by this project; isn't that</p> <p>22 correct?</p> <p>23 A. It would identify the easements for my</p> <p>24 review. Now, as far as if people would be affected</p> <p>25 or not, they wouldn't even know that the easements</p>	<p>1 for a hearing under 444.773, they must do so within</p> <p>2 15 days after the last date of publication; is that</p> <p>3 correct?</p> <p>4 A. Not entirely correct, no. If they had sent</p> <p>5 in a request for a meeting and the meeting was</p> <p>6 denied, then they would be given an additional</p> <p>7 15 days to request a hearing.</p> <p>8 Q. And if they don't do it within that time</p> <p>9 period, then they are not able to participate within</p> <p>10 the hearing process; is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. And you would agree with me that the purpose</p> <p>13 behind the publication itself is to at least provide</p> <p>14 notice to the public that this project is going to</p> <p>15 potentially come in in their area; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. Now, Mr. Brownlee was asking you questions</p> <p>18 about this particular notice, and it's called a</p> <p>19 Public Notice of Surface Mining Application Permit</p> <p>20 Expansion; is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Now, does this notice in any way suggest as</p> <p>23 to whether or not this is an expansion of simply an</p> <p>24 existing permit, or is this actually the enlargement</p> <p>25 of an existing quarry?</p>

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<p>1 A. It does not differentiate between the two, 2 no. 3 Q. So if, in fact, I were to look at this 4 particular notice and there is not a quarry located 5 next to my property, is there any way I could know 6 that this notice could potentially affect my property 7 where I reside, other than the fact that it gives me 8 range, township and section? 9 A. Well, yes. If there's not a quarry next to 10 your property but it says an expansion, then -- and 11 you know that's going to be the site, well, then it 12 could affect your property. 13 Q. And I'd have to know that is going to be the 14 site, correct? 15 A. Well, it lists the site. 16 Q. It does so by township, range and section, 17 correct? 18 A. Correct. 19 Q. Now, looking at this particular notice, does 20 it tell me what permit is going to be expanded? 21 A. Magruder Limestone's permit. 22 Q. Does it tell me the number of the permit? 23 A. No, it does not. 24 Q. Does it tell me the location of the quarry 25 that that permit applies to?</p>	<p>1 2008, is well after the time for which any member of 2 the public could file a petition requesting a 3 hearing, correct? 4 A. Correct. 5 Q. And one of the changes to the original 6 application that we've discussed is now there is a 7 detailed map that reflects the locations of these 8 easements; is that correct? 9 A. That's correct. 10 Q. And the difference between the detailed map 11 contained in the amendment as compared to the 12 detailed map in the original application is the 13 existence and the identification of those easements; 14 is that correct? 15 A. That is a difference between the two, 16 correct. 17 Q. And if a member of the public wanted to file 18 a petition requesting a hearing based upon this new 19 information contained in the amended application, 20 could they have done so as of February of 2008? 21 A. I don't believe so. 22 Q. In fact, they could not, correct? 23 A. Correct. 24 Q. When this amended application came in in 25 February of 2008, did the DNR do anything to</p>
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<p>1 A. It's telling you the location of the site 2 that it applies to. 3 Q. I understand, but it's talking about an 4 expansion of a permit, correct? 5 A. Correct. 6 Q. And that would assume there is a permit that 7 applies to an existing quarry at some location, 8 correct? 9 A. It would imply that it pertains to an 10 existing mine operation. 11 Q. Does it tell me what existing mine operation 12 it's referring to? 13 A. Specific mine operation? No. 14 Q. Now, we know in February of 2008 the 15 amendment to the application is submitted; is that 16 correct? 17 A. Correct. 18 Q. And I think that was referred to as 19 Applicant's No. 6; is that right? 20 A. That's correct. 21 Q. And the date of that document, or at least 22 the cover letter from Mr. McDonald, is February 5th, 23 2008; is that correct? 24 A. That's correct. 25 Q. And this would have been -- February 5th,</p>	<p>1 re-publish any of this information that came in, 2 either in the paper or through some other means? 3 A. No, because an amendment is not an 4 application that requires publication. 5 Q. But you would agree with me that the 6 inclusion of these easements was required at the time 7 the original application was filed, correct? 8 A. Correct. 9 Q. And so at the time that you deemed this 10 application correct in May of 2008, or complete, it 11 was actually incomplete, correct? 12 A. I was unaware of any easements. 13 Q. I understand that. Now you are. So as you 14 sit here today, as of the time this application was 15 submitted and you conducted your checklist review in 16 May of 2007, this application was actually 17 incomplete; isn't that correct? 18 A. We don't really deem them incomplete or 19 complete, though. 20 Q. Well, you do. In May of 2007 you wrote a 21 letter indicating that the application was complete, 22 correct? 23 A. Correct. 24 Q. In fact, as you sit here today, you know 25 there was information that should have been included</p>

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<p>1 in that original application but it was not; isn't 2 that correct? 3 A. I do today, yes. 4 Q. And that information was the location and 5 identification of those easements; isn't that right? 6 A. Correct. 7 Q. The first time that you'd become aware that 8 those easements even exist is when you are out 9 walking the site on January 25th of 2008; is that 10 correct? 11 A. No. 12 Q. It was sometime prior? 13 A. We became aware of the easements when we 14 started receiving letters. 15 Q. You're right. The public comment? 16 A. Correct. 17 Q. And the easement that you became aware of 18 would have been those at least that relate to the 19 water treatment plant; is that correct? 20 A. The sewer easement, correct. 21 Q. And was the first time that you became aware 22 of the Ameren easement, would that have been at the 23 time of the January 25th, 2008, site visit? 24 A. Correct. 25 Q. And you're right, I do recall that. So you</p>	<p>1 Applicant's 3 is the State statute. 2 HEARING OFFICER: Chapter 44? 3 MR. MAUER: Yes, sir. 4 HEARING OFFICER: All right. I have 5 handed to the witness Applicant's 2 and 3. 6 Q. (By Mr. Mauer) And do you have MP-5 in 7 front of you, the original application? 8 A. Yes. 9 Q. I want to start with that. When you 10 reviewed in May of '07 MP-5, the original 11 application, after you looked at it, you determined 12 it was complete based on the information you knew at 13 that time; is that correct? 14 A. Correct. 15 Q. And there was an additional sheet that was 16 given to you that's not in MP-5 that we've 17 subsequently added, and that's the site description 18 sheet, correct? 19 A. Site information sheet, correct. 20 Q. Okay. Do you have that in front of you 21 there? 22 A. Yeah. 23 Q. All right. I want to start with that. 24 According to the site information sheet, the land 25 owner is Eolia Development, right?</p>
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<p>1 had received comments from the public and from City 2 of Osage, as well as others, expressing their 3 concerns about the location of that sewer line 4 running right through the center of this project; is 5 that correct? 6 A. The Land Reclamation Program had received 7 those comments, correct. 8 MR. MCGOVERN: I don't have anything 9 further, Mr. Tichenor. 10 HEARING OFFICER: Mr. Mauer? 11 MR. MAUER: Yes, sir. 12 EXAMINATION 13 QUESTIONS BY MR. MAUER: 14 Q. Mr. Roberts, I have some questions. I'd 15 like to go back to the first permit, which has been 16 identified as MP-5, and if we could get for you a 17 couple of other exhibits, Applicant's 2 and 18 Applicant's 3, which I believe, Adam, you would have 19 copies of since those are your exhibits? 20 HEARING OFFICER: Applicant's 2? 21 MR. MAUER: And 3. 22 HEARING OFFICER: Applicant's 2 23 being -- 24 MR. MAUER: Applicant's 2 is 25 Department of Natural Resources CSR's, yes. And</p>	<p>1 A. Correct. 2 Q. All right. And according to the first page 3 of Exhibit 5, MP-5, Mr. McDonald informed you that 4 Eolia Development actually hadn't purchased the 5 property yet but they intended to close in the 6 future; is that correct? 7 A. That's correct. 8 Q. Did you ever investigate whether, in fact, 9 Eolia Development actually did purchase the land? 10 A. As far as an investigation how? 11 Q. Did you ever receive a deed? 12 A. No. 13 Q. Did you ever review any sort of title work 14 to show that Eolia Development had purchased the 15 land? 16 A. No. None of that's required. 17 Q. So, in other words, no, you've never 18 received anything to actually show that Eolia 19 Development purchased the property? 20 A. No. 21 Q. All right. That site information sheet, I 22 want to go a little bit further down, because it 23 says, "Mineral Rights Owner." Do you see that? 24 A. Yes. 25 Q. All right. And then it lists Magruder</p>

<p style="text-align: right;">Page 78</p> <p>1 Limestone Company, Inc., correct?</p> <p>2 A. Correct.</p> <p>3 Q. And then there's a box checked, and it says,</p> <p>4 "We are leasing from Eolia Development," right?</p> <p>5 A. Correct.</p> <p>6 Q. All right. Have you ever seen the lease</p> <p>7 that was represented to you to exist between Eolia</p> <p>8 Development and Magruder Limestone?</p> <p>9 A. I've never seen a lease, period, between any</p> <p>10 mineral rights or landowner for any permit</p> <p>11 application.</p> <p>12 Q. So is the answer to my question no, you've</p> <p>13 not seen it?</p> <p>14 A. No.</p> <p>15 Q. All right. Are you aware if, in fact, any</p> <p>16 lease or other agreement between Eolia Development</p> <p>17 and Magruder Limestone even exists today?</p> <p>18 A. No.</p> <p>19 Q. All right. Could you look at Applicant's 2,</p> <p>20 which is the CSR's, for me, sir? Yes, sir. If you</p> <p>21 turn to the second page, on the far right-hand</p> <p>22 column, do you see the column that begins</p> <p>23 10 CSR 40-20 -- or 40-10-020, Permit Application</p> <p>24 Requirements?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 80</p> <p>1 for.</p> <p>2 Q. Okay. So they have to be able to show they</p> <p>3 have a legal right to mine that land before they can</p> <p>4 get a permit, true?</p> <p>5 A. Correct.</p> <p>6 Q. All right. And all we've got is a little</p> <p>7 box saying that they're leasing it, correct?</p> <p>8 A. Correct.</p> <p>9 Q. All right. But you've never seen the lease,</p> <p>10 and Magruder's never provided you any copy of any</p> <p>11 lease?</p> <p>12 A. We're not a part of any business dealings,</p> <p>13 and no, I have not seen one.</p> <p>14 Q. Take a look at that same column, but if you</p> <p>15 turn the page, I want to direct your attention to</p> <p>16 Paragraph C at the top. Do you see that it says that</p> <p>17 "On areas leased after August 28, 1990, the Applicant</p> <p>18 shall obtain from the landowner a signed approval of</p> <p>19 the post-reclamation land use"? Do you see where I</p> <p>20 read that?</p> <p>21 A. Yeah.</p> <p>22 Q. All right. Can you show me where in</p> <p>23 Applicant's Exhibit 5 where that -- or I'm sorry --</p> <p>24 MP-5 where the signature of Eolia Development for the</p> <p>25 land use is demonstrated?</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. And are you familiar generally with the</p> <p>2 requirements according to regulations what has to be</p> <p>3 included in the permit?</p> <p>4 A. Yes.</p> <p>5 Q. All right. Would you take a look at Number</p> <p>6 6 in that column? Do you see that there has to be</p> <p>7 the source of the Applicant's legal right to mine the</p> <p>8 land affected by the permit? Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. All right. Would the site information, the</p> <p>11 little box checked that says "Lease," would that be</p> <p>12 the information you received?</p> <p>13 A. Would that be the information I received?</p> <p>14 Q. Yes.</p> <p>15 A. Yes.</p> <p>16 Q. All right. So is there any other</p> <p>17 information that the Land Reclamation Commission</p> <p>18 received to show that the Applicant had a legal right</p> <p>19 to mine the land other than this one checked box that</p> <p>20 we're looking at?</p> <p>21 A. No.</p> <p>22 Q. Would you agree with me that in order to</p> <p>23 actually receive a permit Magruder Limestone must</p> <p>24 have a legal right to mine the land?</p> <p>25 A. That's what the site information form is</p>	<p style="text-align: right;">Page 81</p> <p>1 A. The only thing that I would have would be</p> <p>2 the consent to entry.</p> <p>3 Q. Okay. That's a consent to enter onto the</p> <p>4 land to allow the Land Rec Program to investigate and</p> <p>5 inspect and do other activities, right?</p> <p>6 A. Correct.</p> <p>7 Q. It doesn't say in your consent to entry</p> <p>8 form, MP-5, that they -- that the landowner is</p> <p>9 consenting to the post-reclamation land use; is that</p> <p>10 right? It's not in here on your consent form, is it?</p> <p>11 A. It doesn't specifically say that that is the</p> <p>12 purpose of that form, no.</p> <p>13 Q. Okay. Is there any other document that</p> <p>14 you're aware of that you can show to us whereby the</p> <p>15 landowner has signed an approval of the</p> <p>16 post-reclamation land use?</p> <p>17 A. Has signed specifically approval of the post</p> <p>18 land use? No.</p> <p>19 Q. Do you have anything from the landowner</p> <p>20 showing that they -- that they agree with or consent</p> <p>21 to or are going to be bound by the post-reclamation</p> <p>22 land use as set forth in MP-5?</p> <p>23 A. Repeat that.</p> <p>24 Q. Well, I just wanted to make sure -- you said</p> <p>25 actually signed in writing. I wanted to make sure,</p>

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<p>1 do you have something else? I mean, is there some</p> <p>2 other information, other document, that you can point</p> <p>3 us to whereby that requirement was satisfied?</p> <p>4 A. Well, the landowner is not the one doing the</p> <p>5 mining. They're not the ones that are responsible</p> <p>6 for the reclamation. The operator is responsible for</p> <p>7 the reclamation. So you said something is there</p> <p>8 anything to prove or state that the landowner is</p> <p>9 bound by that post-mining land use. There's not.</p> <p>10 The landowner is not bound by the post-mining land</p> <p>11 use. The landowner has to approve a post-mining land</p> <p>12 use for reclamation before it's released.</p> <p>13 Q. So are you saying that the landowner does</p> <p>14 not have to approve the post-mining land use as part</p> <p>15 of the application process?</p> <p>16 A. The consent to entry gives the -- is what we</p> <p>17 also use when the landowner is giving permission</p> <p>18 for -- besides what they said is the lease as</p> <p>19 checked, that their right to mine is permission to be</p> <p>20 on that property.</p> <p>21 Does the landowner actually have to</p> <p>22 approve the post-mining land use at application? No,</p> <p>23 I guess they don't.</p> <p>24 Q. Okay. Let's take a look, then. On</p> <p>25 Applicant's 2, the second page of Applicant's 2 at</p>	<p>1 to object. Mr. Mauer is reading only a portion of</p> <p>2 the regulation under C, and if you read the second</p> <p>3 portion, it talks about written proof. That's</p> <p>4 included in the application process under Paragraph 3</p> <p>5 at the last page. So we're off on a tangent here</p> <p>6 that's not representative of the fact.</p> <p>7 HEARING OFFICER: You're referencing</p> <p>8 what part of the application?</p> <p>9 MR. MAUER: Signature page, Page 5 of</p> <p>10 5.</p> <p>11 HEARING OFFICER: Page 5 of 5.</p> <p>12 MR. BROWNLEE: By his signature, he</p> <p>13 attests, Paragraph 3.</p> <p>14 MR. MAUER: What, now?</p> <p>15 MR. BROWNLEE: The original</p> <p>16 application, signature page, 5 of 5. At the top</p> <p>17 there's --</p> <p>18 HEARING OFFICER: By my signature, I</p> <p>19 attest the following.</p> <p>20 MR. BROWNLEE: Okay. And Paragraph 3</p> <p>21 addresses what Mr. Mauer has been going on about. He</p> <p>22 has obtained the approval.</p> <p>23 MR. MAUER: Okay.</p> <p>24 HEARING OFFICER: Mr. Mauer, response</p> <p>25 before I rule on the objection?</p>
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<p>1 the very top, 10 CSR, "Permit Application</p> <p>2 Requirements." Do you see that?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. And then there's a big, long list of</p> <p>5 stuff that has to be in the permit, for the</p> <p>6 application for the permit, right?</p> <p>7 A. Yeah.</p> <p>8 Q. And that long list includes at the bottom of</p> <p>9 that page, Number 9, "Minerals to be mined," and then</p> <p>10 you get B, "Authorized Consent Necessary to Grant</p> <p>11 Access," which you got, right?</p> <p>12 A. Right.</p> <p>13 Q. Okay. And then C, "On areas leased after</p> <p>14 August 28th, 1990" -- this lease surely would have</p> <p>15 been, if it exists, after August 28th, 1990, true?</p> <p>16 A. True.</p> <p>17 Q. "The Applicant shall obtain from the</p> <p>18 landowner a signed approval of the post-reclamation</p> <p>19 land use." Do you see that?</p> <p>20 A. I see that, yes.</p> <p>21 Q. All right. Can we agree that there was no</p> <p>22 signature by the landowner, signed approval, of the</p> <p>23 post-reclamation land use as part of MP-5, the</p> <p>24 original application?</p> <p>25 MR. BROWNLEE: Your Honor, I'm going</p>	<p>1 MR. MAUER: Sure. Well, your Honor,</p> <p>2 the signature is by Dean McDonald, and Mr. McDonald</p> <p>3 is not the landowner.</p> <p>4 HEARING OFFICER: No. I understand</p> <p>5 that. He's the Applicant.</p> <p>6 MR. MAUER: Right. There's no</p> <p>7 signature here by the landowner. I'm trying to</p> <p>8 establish if we have any information that -- of</p> <p>9 approval of the post-reclamation land use by the</p> <p>10 landowner, as the statute requires. There's no</p> <p>11 signature anywhere in MP-5 by the landowner other</p> <p>12 than the consent to entry of land.</p> <p>13 Q. (By Mr. Mauer) Is that correct,</p> <p>14 Mr. Roberts?</p> <p>15 HEARING OFFICER: Wait just a moment.</p> <p>16 Wait just a moment. Your point simply is that the</p> <p>17 landowner did not sign a post-reclamation land use</p> <p>18 and that was not submitted with the application?</p> <p>19 MR. MAUER: Correct.</p> <p>20 MR. BROWNLEE: And Paragraph C does</p> <p>21 not require that. It requires only written proof</p> <p>22 that the Applicant has determined the</p> <p>23 post-reclamation land use in conjunction with the</p> <p>24 landowner. Mr. McDonald attested to that.</p> <p>25 HEARING OFFICER: Now, C is -- let me</p>

22 (Pages 82 to 85)

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<p>1 read it outloud so that -- "On areas leased after 2 August 28th, 1990, the Applicant shall obtain from 3 the landowner a signed approval of the 4 post-reclamation land use or shall provide other 5 written proof that he/she has determined the 6 post-reclamation land use in conjunction with the 7 landowner." The sentence is written not in the 8 conjunctive but in the disjunctive. 9 MR. MAUER: I agree. 10 HEARING OFFICER: Mr. Brownlee's 11 objection is that when the application was filed, 12 executed by Mr. McDonald on behalf of the Applicant, 13 that the page provided, as I understand, in the form 14 approved by the Department of Natural Resources, Land 15 Reclamation Program, that Mr. McDonald attests to 16 that in Item No. 3? 17 MR. BROWNLEE: Correct. 18 HEARING OFFICER: I have obtained the 19 approval of all landowners for all lease agreements 20 made after August 29th on leased land and for all 21 proposed post-mining land uses. Therefore, it meets 22 the second part of the sentence, the first sentence, 23 of Sub C on Page 4 of the exhibit of the rules and 24 regulations. That's written proof that they have 25 determined. That's what is attested to.</p>	<p>1 continuing on this trail? Is later in this case is 2 Eolia going to come in and say, look, we never gave 3 them the right to mine? 4 MR. MAUER: There is nothing that 5 shows Eolia has the right to mine. There is no 6 lease. There is no lease. It doesn't exist. 7 There's no agreement between Magruder and Eolia. 8 Dean Magruder has admitted that. There's no lease. 9 It doesn't exist. 10 HEARING OFFICER: Okay. 11 MR. MAUER: So yeah, that's why I was 12 trying to get to that. 13 HEARING OFFICER: So that fact isn't 14 even being -- so why are we going through all of 15 this? Why didn't somebody submit me stipulations of 16 uncontested fact other than Counsel for DNR? So 17 essentially we are establishing something here that 18 was divulged in deposition which should have simply 19 been stipulated to so that we wouldn't be taking up 20 this time. Are you submitting an additional motion 21 that the application should be disapproved by Land 22 Reclamation Commission because of that point? 23 MR. MAUER: Absolutely. 24 HEARING OFFICER: Prepare your motion 25 and submit it, then. How long have you known about</p>
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<p>1 MR. MCGOVERN: I'm sorry. Is that 2 your ruling or is that Mr. -- 3 HEARING OFFICER: That's my ruling. 4 MR. MCGOVERN: Okay. I understand. 5 I'm sorry. 6 HEARING OFFICER: That's the plain 7 language, as far as I can read it. 8 MR. MAUER: Well, that didn't quite 9 go to my... 10 HEARING OFFICER: All right. What am 11 I missing? 12 MR. MAUER: You're right, it's the 13 disjunctive. I haven't gotten to the second part of 14 the sentence yet. I was trying to establish that 15 there is no written approval by the landowner. 16 HEARING OFFICER: Okay. 17 MR. MAUER: And I think the answer to 18 that, I'm hoping the answer is correct, there is no 19 written -- 20 HEARING OFFICER: Well, there is no 21 written approval in this application, but that's not 22 what the rule requires under my ruling. The rule 23 requires one or the other. 24 MR. MAUER: Yes, sir. I understand. 25 HEARING OFFICER: So why are we</p>	<p>1 this, Mr. Mauer? 2 MR. MAUER: About what? 3 HEARING OFFICER: That no lease 4 exists, as you contend. 5 MR. MAUER: Since Mr. McDonald's 6 deposition. But then -- 7 HEARING OFFICER: And when did you 8 take that deposition? 9 MR. MAUER: We first heard it from 10 Mr. McDonald April 7th, perhaps. But then we just 11 deposed Mr. Magruder, Mark Magruder, who is Eolia 12 Development and got that information the 17th. So it 13 was just the other day that we got that information. 14 MR. BROWNLEE: Your Honor, just to -- 15 if we can maybe diverge a minute -- 16 HEARING OFFICER: We've already 17 diverged. 18 MR. BROWNLEE: Eolia Development is 19 owned by Mr. Magruder, and they've testified that the 20 actual lease would be entered into, a written lease, 21 when the permit is granted. There is a verbal lease 22 in existence. 23 HEARING OFFICER: It was my 24 understanding it was -- 25 MR. BROWNLEE: Right. I mean, it's</p>

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<p>1 not like we have some other corporation involved</p> <p>2 here. They're all one in the same people.</p> <p>3 MR. MAUER: No.</p> <p>4 HEARING OFFICER: Well, let me ask</p> <p>5 you this: Can we agree, because my understanding</p> <p>6 was -- and I can't lay my hands on it in the massive</p> <p>7 documents, but that there was a cover letter which</p> <p>8 explained, number one, that the closing on the land</p> <p>9 was not going to take place until after the</p> <p>10 submission of the application. I'll be happy to deal</p> <p>11 with that in the decision as to whether or not that</p> <p>12 ought to be a basis on which the Commission should</p> <p>13 deny the application. Now we're at the issue of</p> <p>14 there was no lease in place when the application was</p> <p>15 filed. And I understand that. I understand what the</p> <p>16 rule and regulation says. But as I understood, it</p> <p>17 was not to be entered into because if, in fact, the</p> <p>18 permit is not granted that there is no need to lease</p> <p>19 the land from the subsidiary corporation. Is that a</p> <p>20 fair statement of where we are?</p> <p>21 MR. BROWNLEE: It's my understanding.</p> <p>22 And there was a letter -- I don't know the exact</p> <p>23 document, but there's a letter submitted to DNR that</p> <p>24 explains all of that.</p> <p>25 MR. MAUER: Actually, I think it's</p>	<p>1 what is this, Applicant's 2, the rules and</p> <p>2 regulations, 10 CSR. This is on Page 3, third</p> <p>3 column, 10 CSR 40-10.020(1). Everybody on that page?</p> <p>4 "The Commission shall prescribe the form and content</p> <p>5 of the application to be submitted to the Commission</p> <p>6 in order for an operator to obtain a mining permit."</p> <p>7 The plain language of that sentence is an Applicant</p> <p>8 cannot devise their own form; they must comply with</p> <p>9 the form.</p> <p>10 The second sentence is "The Applicant must</p> <p>11 submit the required information before a permit may</p> <p>12 be issued." The permit has not been issued, people.</p> <p>13 And whatever deficiencies -- and I'm not sure whether</p> <p>14 there are any deficiencies in reading the rules and</p> <p>15 regulations. Whatever deficiencies are alleged in</p> <p>16 this, the omitting of the Ameren UE easement, the</p> <p>17 omitting of the Joint Sewer Board easement, assuming</p> <p>18 that those are deficiencies, it has been corrected by</p> <p>19 the submission in February.</p> <p>20 We now are at a junction where we are</p> <p>21 dealing with the fact that there was no lease in</p> <p>22 place when the application was filed. Again, I don't</p> <p>23 read the rules and regulations that the lease be</p> <p>24 required to be in place. What is required is you</p> <p>25 have to have a legal right to mine that land before</p>
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<p>1 just a cover letter. The only letter I'm aware of is</p> <p>2 the cover letter on MP-5.</p> <p>3 MR. BROWNLEE: Well, and it explains</p> <p>4 it.</p> <p>5 MR. MAUER: It doesn't explain</p> <p>6 anything about a lease not being in place. And, in</p> <p>7 fact, on the application, the box checked says there</p> <p>8 is a lease. There is nothing that I'm aware of where</p> <p>9 the Land Reclamation --</p> <p>10 HEARING OFFICER: Well, Mr. Mauer,</p> <p>11 I'm not sure I read the box being checked as there is</p> <p>12 a lease in place. I read the box being checked that</p> <p>13 they are going to mine this under a lease.</p> <p>14 So am I also fairly well correct in</p> <p>15 assuming that whenever we put Mr. McDonald or</p> <p>16 Mr. Magruder on the stand that we're going to</p> <p>17 establish that, in fact, a lease will be entered into</p> <p>18 if this permit is granted? Is that fairly well going</p> <p>19 to be established.</p> <p>20 MR. BROWNLEE: That's going to be</p> <p>21 part of our testimony on Wednesday. It's just --</p> <p>22 again, it's the order of witnesses that's caused us</p> <p>23 not to come in in the sequence of ABC.</p> <p>24 HEARING OFFICER: I want to direct</p> <p>25 your all's attention to, while we have it out, the --</p>	<p>1 you start mining it. And our testimony is going to</p> <p>2 establish, from what I understand, that there is</p> <p>3 going to be a lease in place to do that, which means</p> <p>4 that part of the application, if it is required to be</p> <p>5 in place at the time the application is filed -- or</p> <p>6 is granted, is going to be in place as far as</p> <p>7 evidence before the Commission. The Commission will</p> <p>8 have the evidence that the legal right to mine this</p> <p>9 land is by a lease and that there will be a lease put</p> <p>10 in place before it's ever going to issue that permit.</p> <p>11 I just don't know where else we are going</p> <p>12 with this, Mr. Mauer. I'm happy to have you file a</p> <p>13 written motion or an addendum to your previous motion</p> <p>14 to state as another ground of -- for dismissal or</p> <p>15 denial of the permit, actually, more correctly, that</p> <p>16 there was no lease in place at the time. And I'll be</p> <p>17 happy to rule on it in the proposed order that I</p> <p>18 prepare for the Commission and set this all out so</p> <p>19 that if the Commission agrees with me and adopts my</p> <p>20 proposed rule on that point that that can be taken</p> <p>21 up, assuming once I really hear from the experts I</p> <p>22 can make a determination as far as the impact on the</p> <p>23 safety of that sewer line.</p> <p>24 But I just -- I don't know where else we</p> <p>25 need to go with this since I think it's -- it is</p>

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<p>1 clear there's no dispute. Magruder did not have a 2 lease at the time of filing the application. I do 3 not read the regulation that it had to have a lease 4 at the time. But that's the legal basis under which 5 it's going to mine, and if that isn't developed in 6 later evidence, then we can address that further, but 7 I -- I just don't see any need of going further with 8 this.</p> <p>9 And it really should have been taken care 10 of in a simple stipulation as to the fact, not what 11 might be the legal ramifications of the fact, just 12 the simple fact. All right. Sorry for that 13 interruption of your cross-examination, Mr. Mauer. 14 You may proceed.</p> <p>15 MR. MAUER: Okay.</p> <p>16 Q. (By Mr. Mauer) And I'm sorry, I just want 17 to make sure the record is clear. The site 18 information sheet, Mr. Roberts, the box that checks 19 leased, written behind it, if you could see there, it 20 says, "We are leasing from Eolia Development;" is 21 that right?</p> <p>22 A. That's correct.</p> <p>23 Q. Thank you. The application, MP-5, had a 24 detailed map; is that right?</p> <p>25 A. Correct.</p>	<p>1 property within the mine plan area, true?</p> <p>2 A. Restate that.</p> <p>3 Q. If I'm looking at the map with the 4 boundaries as they've drawn them, that shows that 5 Magruder intends to mine within the entire area 6 within the mine plan?</p> <p>7 A. Their intentions... What they have done is 8 they have notified here's 205 acres. That's their 9 mine plan. As far as intent, correct.</p> <p>10 Q. Thank you. The map, Exhibit -- on MP-5, 11 it's a detailed map we're looking at, the 50-foot 12 set-back, did that also have an impact on the notice 13 requirements for notifying adjacent landowners?</p> <p>14 A. Correct.</p> <p>15 Q. And because they drew it the way they drew 16 their mine plan 50 foot in from their own boundaries, 17 then they did not have to provide written notice to 18 the adjacent landowners; is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Also, by looking at that 205 -- the mine 21 plan where they've drawn it, it does show that lying 22 within the area that they could mine is the Joint 23 Sewer Board's easements for the two sewer lines, 24 correct?</p> <p>25 A. Restate that again.</p>
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<p>1 Q. And that detailed map showed the mine plan 2 area; is that correct?</p> <p>3 A. Correct.</p> <p>4 Q. And there's an inset of 50 feet all the way 5 around the mine plan, is that right, the boundaries 6 of the area?</p> <p>7 A. Correct.</p> <p>8 Q. So based on the mine plan, Magruder would be 9 permitted to mine anywhere within 50 feet all the way 10 around their property line, assuming that they put up 11 the appropriate bonding?</p> <p>12 A. Correct.</p> <p>13 Q. And to identify additional bonding area, all 14 they'd have to do is submit additional money and 15 information so that they can begin mining on new 16 bonded territory; is that correct?</p> <p>17 A. That's correct, because the mine plan has 18 been approved.</p> <p>19 Q. So they don't have to go back through 20 notice, public notice, publish --</p> <p>21 A. They've already notified that they have the 22 intent to mine on the mine plan acreage.</p> <p>23 Q. All right. So by looking at the map that 24 was submitted in April of 2007, the mine plan area 25 shows that they intend to mine all -- the entire</p>	<p>1 Q. Okay. The 205 acres, when you look at the 2 little dashed line all the way around the perimeter 3 of their property, they didn't carve out the land 4 alongside of the Joint Sewer Board's two sewage 5 treatment lines, did they?</p> <p>6 A. No.</p> <p>7 Q. All right. Also, there's a little dashed 8 line on that map that shows 10 acres that was 9 originally bonded, right?</p> <p>10 A. Correct.</p> <p>11 Q. And if you look at where that 10 acres is 12 drawn in, that actually covers over top of the wet 13 weather stream that's drawn on the map, true?</p> <p>14 A. Correct.</p> <p>15 Q. So if this permit had been granted as it was 16 submitted to you, the only 10 acres that Magruder 17 would have been able to begin quarrying on was that 18 10 acres identified right there on the map, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And that 10 acres you now know would be 21 right over top of the Joint Sewer Board's two sewage 22 treatment lines which abut that wet weather stream?</p> <p>23 A. Correct.</p> <p>24 Q. So based on this map that was submitted and 25 this application, the land that Magruder said we want</p>

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<p>1 to start quarrying on is 10 acres, which would be 2 right on top of the City's sewage treatment lines? 3 A. Restate that again. 4 Q. Based on this map and this application, the 5 first application, what Magruder said, the 10 acres 6 they identified to start on, was right on top of the 7 two sewage treatment lines? 8 A. Correct. 9 Q. All right. Now, could you go to what's been 10 deemed the supplement, which is Applicant's No. 6? 11 A. (Complies.) 12 Q. Do you have it? 13 A. Yeah. 14 Q. Okay. When you look at the first page, it 15 says that there's an additional 90 acres being 16 bonded; is that right? 17 A. Yes. 18 Q. This letter, the first page of Applicant's 19 6, doesn't identify which 90 acres within the mine 20 plan area; is that true? 21 A. Right here on this letter it does not say 22 which 90 acres, no. 23 Q. Okay. So from looking at the first page, 24 you can't tell which 90 acres, correct? 25 A. Correct.</p>	<p>1 the map that you just referred to. 2 MR. MAUER: It's the only map I have. 3 HEARING OFFICER: All right. Do you 4 have a separate Applicant's 6 there? 5 MR. ROBERTS: Not in here, no. 6 MR. BROWNLEE: If you looked -- for 7 clarification, if you looked at the original -- the 8 problem is all of us are operating on copies. The 9 original application was highlighted to show the 90 10 acres, and it's just not -- it's the triangular and 11 it's just not showing up on the exhibit. 12 HEARING OFFICER: Well, what I'm 13 saying is in the exhibits that were provided to me, 14 there is -- when Mr. Mauer asked his question about 15 on the next map, the next map shows 100 acres bonded, 16 which I assume is in the area that it is bonded. 17 MR. MAUER: I don't have that one. 18 HEARING OFFICER: Mr. Mauer does not 19 have that. 20 MR. MAUER: That was not part of the 21 Applicant's 6 that I received. 22 HEARING OFFICER: Is it part of your 23 Applicant 6, Mr. Troutwine? 24 MR. TROUTWINE: No, it's not. 25 HEARING OFFICER: All right. Then</p>
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<p>1 Q. All right. Turn to the next page. The 2 second page of Applicant's 6, is there anything on 3 the second page of Applicant's 6 that identifies 4 which 90 acres is now bonded? 5 A. No. 6 Q. All right. The third page of Applicant's 6, 7 is there anything on the third page of Applicant's 6 8 that identifies which 90 acres is now being bonded? 9 A. No. 10 Q. All right. The next page is the 11 supplemental map, right? 12 A. Correct. 13 Q. All right. Let's skip that for a second. 14 Turn to the last page of Applicant's 6. Is there 15 anything on the last page of Applicant's 6 that 16 identifies which 90 acres is now being bonded? 17 A. No. It's simply a fee sheet. 18 Q. Okay. So go back to the map. Okay? I want 19 you to compare for me, do you remember the original 20 map in MP-5 you looked at there was the little map -- 21 HEARING OFFICER: Excuse me just a 22 minute, Mr. Mauer. I want to make sure I'm looking 23 at the same map that you just referred to. Is this 24 the map that -- yeah, approach. Thank you, sir. My 25 Applicant's 6 is showing an additional map. This is</p>	<p>1 it's coming out of mine. There is also a Permit 2 Application For Industrial Mineral Mines Geological 3 Resource Fee sheet. 4 MR. MAUER: Yes. 5 HEARING OFFICER: That you've got, 6 Mr. Mauer? All right. Then I'm straight with -- 7 since that's the exhibit the opposing party received 8 and the exhibit which I understand Mr. Troutwine said 9 we've accepted, that's the exhibit. Sorry for the 10 interruption. Proceed. 11 Q. (By Mr. Mauer) Okay. If you look at the 12 original map in MP-5, you see there's a little dashed 13 line that identifies the 10 acres, right? 14 A. Right. 15 Q. Now, on Applicant's 6, the new map, those 16 little dashed lines in that 10 acres have been 17 removed, correct? 18 A. Correct. 19 Q. All right. And in looking at Applicant 6, 20 the map, is there anywhere that's identified on this 21 map the 90 acres that's been added? 22 A. Not this map, no. 23 Q. Okay. So from looking at Applicant's 6, at 24 least the ones we've been given, there is nothing to 25 identify which 90 acres has now been bonded, right?</p>

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<p>1 A. Not on this map, no.</p> <p>2 Q. Well, not in all of Applicant's 6. We've</p> <p>3 been through all the pages now, right, so you can't</p> <p>4 tell which 90 acres, true?</p> <p>5 A. Correct.</p> <p>6 Q. All right. Is it typical that if a bond is</p> <p>7 going to be expanded to include additional area that</p> <p>8 you would want to know which acres are being expanded</p> <p>9 so you'd know which of the 205 acres there is now</p> <p>10 permission to quarry on?</p> <p>11 A. Yes.</p> <p>12 Q. All right. Let me ask you this: The</p> <p>13 original 10 acres, is it your memory and</p> <p>14 understanding that the original 10 acres is still</p> <p>15 bonded?</p> <p>16 A. Yes.</p> <p>17 Q. All right. So if this permit is granted,</p> <p>18 Magruder would have the ability to start quarrying</p> <p>19 and they could quarry immediately adjacent to the</p> <p>20 sewage treatment lines as identified on that 10</p> <p>21 acres?</p> <p>22 A. Correct.</p> <p>23 Q. And there would be nothing on the permit</p> <p>24 process or the Land Reclamation Commission</p> <p>25 requirements to prevent them from quarrying on that</p>	<p>1 where I read that?</p> <p>2 A. Yes.</p> <p>3 Q. All right. Now, is it my understanding that</p> <p>4 as of February 8th -- or February 5th, 2008, the</p> <p>5 application was deemed complete because a map was</p> <p>6 submitted that identified the easements?</p> <p>7 A. Correct.</p> <p>8 Q. Since February 5th, 2008, has the Director</p> <p>9 given the operator -- or has the operator published a</p> <p>10 notice of intent to operate a surface mine? After</p> <p>11 that date, has that been done?</p> <p>12 A. No.</p> <p>13 Q. All right. Can you find for me anything --</p> <p>14 or are you aware of anything in Missouri statutes,</p> <p>15 Applicant's 3, or the Code of Regulations,</p> <p>16 Applicant's 2, that allows for an amendment to occur</p> <p>17 to the application after this published notice has</p> <p>18 occurred?</p> <p>19 A. I believe it would be exactly what Officer</p> <p>20 Tichenor read prior. Right there at Page 3,</p> <p>21 10 CSR 40-10.020, Permit Application Requirements.</p> <p>22 "The Applicant must submit the required information</p> <p>23 before a permit may be issued."</p> <p>24 Q. Other than that general statement, are you</p> <p>25 aware of anything else you can point us to that would</p>
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<p>1 land?</p> <p>2 A. Under general permit requirements as far</p> <p>3 as -- correct.</p> <p>4 Q. All right. Is there anything in</p> <p>5 Applicant's -- actually, let's go to Applicant 3,</p> <p>6 which is the state statute, Chapter 444. If you'd</p> <p>7 turn seven pages back, you'll see a section called</p> <p>8 Permit Application, Contents, Fees, Amendment. Do</p> <p>9 you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Under Number 2, would you agree with</p> <p>12 me that under two and then there's the (2) that the</p> <p>13 state statutes also require the identification of the</p> <p>14 source of the Applicant's legal right to mine the</p> <p>15 land affected by the permit?</p> <p>16 A. That's what it states.</p> <p>17 Q. Okay. And then if you go two pages back, I</p> <p>18 want to direct your attention to Number 10. Do you</p> <p>19 see Number 10?</p> <p>20 A. Yes.</p> <p>21 Q. The state statute states that, "At the time</p> <p>22 that a permit application is deemed complete by the</p> <p>23 Director, the operator shall publish a notice of</p> <p>24 intent to operate a surface mine in any newspaper</p> <p>25 qualified pursuant to Section 493.050." Do you see</p>	<p>1 allow a permit to be complete after the publication</p> <p>2 has occurred?</p> <p>3 A. It was deemed complete prior to that being</p> <p>4 noted -- that being published.</p> <p>5 Q. Yes, sir. I already understood that with</p> <p>6 Mr. McGovern. But then you found out some more</p> <p>7 information, and it was incomplete, right? I think</p> <p>8 we've already established that. I'm not trying to</p> <p>9 re-plow the same field.</p> <p>10 A. Okay. Is there a specific thing that states</p> <p>11 that in those? Not that I'm aware of.</p> <p>12 Q. Thank you. Have you ever had a -- no,</p> <p>13 that's all right. I'll wait for that.</p> <p>14 I want to ask you a few questions about</p> <p>15 notices of violations, NOV's. You're familiar with</p> <p>16 that process when you do your site inspections,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. I believe at the time of your deposition you</p> <p>20 testified that during the past year you'd been on</p> <p>21 approximately 100 site visits; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Is that still an appropriate number, or have</p> <p>24 you done more since then?</p> <p>25 A. I've done more since then.</p>

27 (Pages 102 to 105)

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<p>1 Q. How many more?</p> <p>2 A. With industrial minerals and the Troutman</p> <p>3 rule sites combined, probably closer to 150.</p> <p>4 Q. All right. So in the last year you've done</p> <p>5 approximately 150 site visits?</p> <p>6 A. Probably in the last year, year and a half.</p> <p>7 Q. All right. And in that year and a half, if</p> <p>8 I understood your prior testimony, about 25 percent</p> <p>9 of the time you observed conditions which could be</p> <p>10 violations?</p> <p>11 A. I believe that's what I testified to, yes.</p> <p>12 Q. And is that still your testimony today?</p> <p>13 A. Yes.</p> <p>14 Q. But you didn't always have to write up a</p> <p>15 formal notice of violation; isn't that true?</p> <p>16 A. Have to write up a form? No.</p> <p>17 Q. You went through a process called CC&P; is</p> <p>18 that right?</p> <p>19 A. Yes.</p> <p>20 Q. Would you explain the CC&P process for the</p> <p>21 Commissioner, please -- for the Hearing Officer.</p> <p>22 A. CC&P is conference, conciliation and</p> <p>23 persuasion. If a condition is observed that could</p> <p>24 be -- could potentially be a violation or may be a</p> <p>25 non-compliance, then the operator is notified through</p>	<p>1 times have you actually written up a formal NOV?</p> <p>2 A. Once.</p> <p>3 Q. All right. So even though you observed many</p> <p>4 conditions that could have been violations, you only</p> <p>5 actually wrote up a formal NOV one time?</p> <p>6 A. Correct.</p> <p>7 Q. And you didn't do the other ones because you</p> <p>8 talked with the operator and gave them a chance to</p> <p>9 fix it and hoped that you could work through it in</p> <p>10 the CC&P process?</p> <p>11 A. Based on the situation, yes.</p> <p>12 Q. Okay. When was the last time you inspected</p> <p>13 any of the Magruder quarries?</p> <p>14 A. I'm not sure that I've done an inspection on</p> <p>15 a Magruder quarry.</p> <p>16 Q. Okay. Thank you. I believe you testified</p> <p>17 earlier that people may call you and submit things in</p> <p>18 advance, applicants, to try and get you to review</p> <p>19 them, make sure they look okay and things like that;</p> <p>20 is that true?</p> <p>21 A. Well, it's kind of a standard practice,</p> <p>22 especially with operators that are paying consultants</p> <p>23 or something. They only want it to be done once,</p> <p>24 they only want to have to submit it once, so they</p> <p>25 will send in an example of what they think they have</p>
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<p>1 the inspection or through the inspection report that</p> <p>2 this situation does exist, and recommendations or</p> <p>3 requirements are identified of what they need to do</p> <p>4 to fix that situation. And through that process of</p> <p>5 CC&P, that is how those situations are resolved.</p> <p>6 Q. And so rather than writing up a formal</p> <p>7 notice of violation, if I understand your process,</p> <p>8 you take the occasion to talk with the operator, make</p> <p>9 recommendations and discuss how they might perform</p> <p>10 better or fix the proposed -- the potential violation</p> <p>11 and give them a chance to do that; is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. So even though you would have observed an</p> <p>14 actual violating condition, it doesn't get written up</p> <p>15 as a formal notice of violation?</p> <p>16 A. Now, this depends on the situation.</p> <p>17 Q. I understand. But that does happen?</p> <p>18 A. Correct.</p> <p>19 Q. And out of the 25 actual notices of --</p> <p>20 actual violating conditions that you observed, how</p> <p>21 many actual notices of violations did you write up?</p> <p>22 A. You're stating that I saw 25 actual</p> <p>23 occurrences. I said approximately 25 percent of the</p> <p>24 time there may be.</p> <p>25 Q. Okay. Let me ask it this way: How many</p>	<p>1 and ask, okay, does this meet the requirements.</p> <p>2 Q. And did you have conversations with Dean</p> <p>3 Magruder about the application that's at issue here</p> <p>4 today before it was formally submitted?</p> <p>5 A. No. And Dean McDonald. No.</p> <p>6 Q. I'm sorry. I said Dean Magruder. My</p> <p>7 apologies. Dean McDonald?</p> <p>8 A. No.</p> <p>9 Q. Did you have any conversations with anyone</p> <p>10 on behalf of Magruder Limestone about this</p> <p>11 application prior to it being submitted?</p> <p>12 A. Myself, no.</p> <p>13 Q. Do you have any knowledge of anyone from the</p> <p>14 Land Rec Program telling anybody from Magruder</p> <p>15 Limestone that they did not have to identify</p> <p>16 easements on the detailed map as part of the</p> <p>17 application process?</p> <p>18 A. Do I have personal knowledge of that? No.</p> <p>19 MR. MAUER: Nothing further at this</p> <p>20 time.</p> <p>21 HEARING OFFICER: Let's see. We're</p> <p>22 ready for redirect, I believe. Mr. Duggan, do you</p> <p>23 have any redirect?</p> <p>24 MR. DUGGAN: No redirect.</p> <p>25 HEARING OFFICER: All right. Mr.</p>

<p style="text-align: right;">Page 110</p> <p>1 Brownlee?</p> <p>2 EXAMINATION</p> <p>3 QUESTIONS BY MR. BROWNLEE:</p> <p>4 Q. Regarding Mr. Mauer's questions dealing with</p> <p>5 the mine plan where you said that by listing 205</p> <p>6 acres within the 50-foot set-back that they intended</p> <p>7 to mine that whole area, do you know what they</p> <p>8 intended by listing the 205 acres?</p> <p>9 A. What they intended, no. They were stating</p> <p>10 this is the 205 acres, that we're giving notice of</p> <p>11 205 acres for a surface mining operation.</p> <p>12 Q. So they could mine 50 of that, change the</p> <p>13 whole project and not intend to mine 205 acres.</p> <p>14 Isn't that a fair statement?</p> <p>15 A. That's a fair statement.</p> <p>16 Q. And the 50-foot set-back, that's perfectly</p> <p>17 acceptable under Missouri law, is it not?</p> <p>18 A. Correct.</p> <p>19 Q. And don't companies utilize that 50 foot,</p> <p>20 for example, to put stockpile materials in?</p> <p>21 A. Different companies may do different things</p> <p>22 with it.</p> <p>23 Q. And it allows them during reclamation to go</p> <p>24 in and utilize that 50-foot boundary so that they</p> <p>25 don't have to get on someone else's property with</p>	<p style="text-align: right;">Page 112</p> <p>1 so that we know that there's the existence of that</p> <p>2 map that was highlighted.</p> <p>3 MR. ROBERTS: I have seen it, yes.</p> <p>4 Q. (By Mr. Brownlee) You have seen it? And</p> <p>5 I'm assuming somewhere within the DNR -- or the LRC</p> <p>6 records we can get the original of that amendment or</p> <p>7 that supplemental, could we not?</p> <p>8 A. Correct.</p> <p>9 Q. Do you know anywhere in the Missouri Land</p> <p>10 Reclamation laws where the Commission has an</p> <p>11 authority to grant an exception on permitting issues</p> <p>12 and operating issues should the operator prove to the</p> <p>13 Commission that it warrants an exception?</p> <p>14 A. An exception?</p> <p>15 Q. Uh-huh.</p> <p>16 A. I know that they can put in place additional</p> <p>17 conditions, yes.</p> <p>18 Q. What kind of conditions do they put in to</p> <p>19 just -- or if you know. Maybe Mr. Coen is maybe more</p> <p>20 appropriate.</p> <p>21 A. I don't know.</p> <p>22 MR. BROWNLEE: Okay. Thank you. I</p> <p>23 have nothing further.</p> <p>24 HEARING OFFICER: Mr. McGovern,</p> <p>25 anything further?</p>
<p style="text-align: right;">Page 111</p> <p>1 graders and everything. That's a reason to set back,</p> <p>2 is it not?</p> <p>3 A. It could be, yes.</p> <p>4 Q. And, again, it's perfectly legal under</p> <p>5 Missouri law, is it not?</p> <p>6 A. Correct.</p> <p>7 Q. And regarding -- and you may or may not</p> <p>8 remember. I think, again, to Mr. Mauer's question on</p> <p>9 this supplement to go from the 10-acre bonded to the</p> <p>10 90, do you recall whether the actual application, the</p> <p>11 original submitted, had a highlighted area of the 90</p> <p>12 acres as opposed to what we're unfortunately dealing</p> <p>13 with here which doesn't show the highlighted?</p> <p>14 MR. MCGOVERN: I'm going to object as</p> <p>15 to best evidence, if that's going to be excluded from</p> <p>16 the record.</p> <p>17 MR. BROWNLEE: Well, if he has a --</p> <p>18 MR. MCGOVERN: I'm still going to</p> <p>19 object as to hearsay and best evidence.</p> <p>20 HEARING OFFICER: Well, as I</p> <p>21 understand the question, has he seen, is the</p> <p>22 appropriate question, has he seen. If he's seen,</p> <p>23 that's fine, but Mr. McGovern's objection best</p> <p>24 evidence is the Hearing Officer needs to see that</p> <p>25 document. So if you want to establish if he has seen</p>	<p style="text-align: right;">Page 113</p> <p>1 MR. MCGOVERN: Yes.</p> <p>2 HEARING OFFICER: Proceed.</p> <p>3 EXAMINATION</p> <p>4 QUESTIONS BY MR. MCGOVERN:</p> <p>5 Q. Mr. Roberts, you have cited us to a</p> <p>6 provision within the Code of State Regulations upon</p> <p>7 which I think you relied in response to a question</p> <p>8 from Mr. Mauer about amendments to the permit. And I</p> <p>9 will direct your attention to 10 CSR 40-10, which is</p> <p>10 Applicant's Exhibit 2, and that general pronouncement</p> <p>11 you read is "The Applicant must submit the required</p> <p>12 information before a permit may be issued," correct?</p> <p>13 A. Under 10 CSR 40-10?</p> <p>14 Q. .020, Section 1.</p> <p>15 A. Okay.</p> <p>16 Q. That general pronouncement that you read to</p> <p>17 us. Did I read that correctly?</p> <p>18 A. What's that?</p> <p>19 Q. It says, "The Applicant must submit the</p> <p>20 required information before a permit may be issued"?</p> <p>21 A. Correct.</p> <p>22 Q. Now, if you take a look at Applicant's 3,</p> <p>23 which is the statute, and if you take a look at</p> <p>24 444.773, in Section 1 -- I'm looking down about six</p> <p>25 or seven lines, the sentence that begins, "If the</p>

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<p>1 Director." Do you see that?</p> <p>2 A. If the Director, yes.</p> <p>3 Q. "If the Director determines that the</p> <p>4 application has not fully complied with the</p> <p>5 provisions of Section 444.772 or any rule or</p> <p>6 regulation promulgated pursuant to that section, the</p> <p>7 Director shall recommend denial of the permit." Do</p> <p>8 you see that?</p> <p>9 A. I do.</p> <p>10 Q. Now, the Director would be Mr. Coen,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. Now, if I take a look at 444.772, that is</p> <p>14 the section that pertains to what the application</p> <p>15 must include; is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And if I look at Section 3 -- this would</p> <p>18 actually be over on the right column towards the top.</p> <p>19 Do you see that?</p> <p>20 A. Section 3 of what?</p> <p>21 Q. In 444.772.</p> <p>22 A. Okay.</p> <p>23 Q. It says, "The application for a permit shall</p> <p>24 be accompanied by a map in a scale and form specified</p> <p>25 by the Commission by regulation," correct?</p>	<p>1 Q. Sure. At the time the Director, Mr. Coen,</p> <p>2 recommends approval or issuance of a permit that the</p> <p>3 application was in compliance with the provisions of</p> <p>4 444.772, correct?</p> <p>5 A. I'm not sure. Would you repeat that again?</p> <p>6 Q. Sure.</p> <p>7 A. You've taken me all over the place, and I</p> <p>8 haven't got there yet.</p> <p>9 Q. I'm sorry. We'll take our time. What my</p> <p>10 question is, at the time the Director, Mr. Coen,</p> <p>11 recommends issuance of the permit, at that point we</p> <p>12 know at least based upon the information provided</p> <p>13 that the application was in compliance with 444.772,</p> <p>14 which is the provision of the statute that identifies</p> <p>15 all those things that a permit must include, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And, in fact, when you go to 444.772,</p> <p>18 Section 3, one of the things that the application</p> <p>19 must have is the map which is -- "should be</p> <p>20 accompanied by a map in a scale and form specified by</p> <p>21 the Commission by regulation." Now, if you take a</p> <p>22 look over at the provision pertaining to these very</p> <p>23 hearings, 10 CSR 40-10.080, do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. If I look at Public Meetings in the first</p>
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<p>1 A. Correct.</p> <p>2 Q. Now, we know from your earlier testimony</p> <p>3 that, in fact, the Department did promulgate rules</p> <p>4 and regulations dealing with the maps, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And that would be the locator map and the</p> <p>7 detailed map; is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. And so we know that at the time the Director</p> <p>10 recommends approval that at least according to</p> <p>11 444.773 the Director must have determined that the</p> <p>12 application has fully complied with the provisions of</p> <p>13 Section 444.772, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Now, if I go over and I take a look at the</p> <p>16 provisions dealing with hearings, the very hearing</p> <p>17 that we're participating in, so now take a look at</p> <p>18 CSR, which is Applicant Exhibit 2, and I'm looking at</p> <p>19 10 CSR 40-10.080. So you would agree with me,</p> <p>20 Mr. Roberts, at the time the Director recommends</p> <p>21 approval that we could not only assume, but according</p> <p>22 to the statute believe, that the application has</p> <p>23 complied with each of those provisions of 444.772,</p> <p>24 correct?</p> <p>25 A. Repeat that, please.</p>	<p>1 section, "If the recommendation of the Director is</p> <p>2 for issuance of the permit" -- now, again, before he</p> <p>3 could ever get to that point, he has to conclude</p> <p>4 based, I'm sure, on recommendation from staff that it</p> <p>5 is compliant with 444.772, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And if, in fact, he does that and a petition</p> <p>8 has been filed by an aforementioned person or persons</p> <p>9 prior to the termination of the public notice time</p> <p>10 frame, the Director shall within 30 days after the</p> <p>11 time frame for such request has passed or that a</p> <p>12 public meeting be held, provided that the Applicant</p> <p>13 agrees. And we've talked about the public meeting</p> <p>14 process, and then you have so many days, again as set</p> <p>15 by regulation, in which to request a petition for a</p> <p>16 hearing such as this one, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And if you don't request that hearing within</p> <p>19 the time frame provided in the regulation, then you</p> <p>20 don't get as a member of the public to participate in</p> <p>21 that hearing, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And we would assume, based upon this</p> <p>24 language, that at the time that period expires --</p> <p>25 what I'm talking about is the time period that</p>

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<p>1 somebody can file a petition for hearing -- that that</p> <p>2 application should be complete as of that time,</p> <p>3 correct?</p> <p>4 A. We could assume that, correct.</p> <p>5 Q. In fact, the regulation says it should,</p> <p>6 shouldn't it?</p> <p>7 A. Correct.</p> <p>8 Q. And then if I go over to -- now I'm in</p> <p>9 Section B, so I've got -- I'm sorry -- 2B, which is</p> <p>10 in the middle of the page, about midway down. This</p> <p>11 talks about "The Petitioner is said to have standing</p> <p>12 to be granted a formal public hearing if the</p> <p>13 Petitioner provides good faith evidence of how their</p> <p>14 health, safety or livelihood will be unduly impaired</p> <p>15 by the issuance of the permit." So there's that</p> <p>16 language again, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And so again we can assume at the time the</p> <p>19 Petitioner would make that application that the</p> <p>20 application would be complete, correct?</p> <p>21 A. From reading that?</p> <p>22 Q. Yes.</p> <p>23 A. It doesn't say anything about a complete</p> <p>24 application. It says that they can file if they feel</p> <p>25 that their health, safety or livelihood will be</p>	<p>1 Q. Have you ever seen it in any instance other</p> <p>2 than the Magruder application?</p> <p>3 A. Well, a lot of times the mine plan doesn't</p> <p>4 even go to the property boundary, so that's not an</p> <p>5 issue. I can't say that I have or not.</p> <p>6 Q. All I'm asking is, have you ever seen an</p> <p>7 application other than the Magruder application in</p> <p>8 which there was a 50-foot set-back line established</p> <p>9 for the entire mine plan around the entire boundary</p> <p>10 of the property?</p> <p>11 A. I don't recall.</p> <p>12 MR. MCGOVERN: I don't have anything</p> <p>13 further.</p> <p>14 HEARING OFFICER: Mr. Mauer?</p> <p>15 MR. MAUER: Yes, sir. Just a couple</p> <p>16 of things.</p> <p>17 EXAMINATION</p> <p>18 QUESTIONS BY MR. MAUER:</p> <p>19 Q. Mr. Roberts, thank you for your time. I</p> <p>20 really do appreciate it. I want to confirm, MP-5,</p> <p>21 which was the original application, plus the site</p> <p>22 information sheet and Applicant's 6, which is the</p> <p>23 February 5th, 2008, is that now all of the</p> <p>24 information that the Land Rec Program considers to be</p> <p>25 the application submitted by Magruder for the Lake</p>
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<p>1 unduly affected.</p> <p>2 Q. I understand. And at the time frame and at</p> <p>3 the point that they can do that based on all those</p> <p>4 earlier provisions we just went through, the</p> <p>5 application should be complete at that point so a</p> <p>6 Petitioner can make an educated decision as to</p> <p>7 whether or not, in fact, he wants to request such a</p> <p>8 hearing, correct?</p> <p>9 A. Correct.</p> <p>10 Q. In fact, that's only fair, isn't it?</p> <p>11 A. Yes.</p> <p>12 Q. I just want to make the distinction between</p> <p>13 the 50-foot set-back and a 50-foot buffer. Now, you</p> <p>14 have certainly seen a lot of operators who will not</p> <p>15 put spoils or burden, overburden, within 50 foot of</p> <p>16 the property line, and that's to ensure they don't</p> <p>17 have any material going onto adjoining property</p> <p>18 owners, correct?</p> <p>19 A. I can't say that I've seen a lot of that,</p> <p>20 correct.</p> <p>21 Q. The 50-foot set-back like you've seen in</p> <p>22 this case, how frequently have you seen operators</p> <p>23 establish a 50-foot set-back for their mine plan</p> <p>24 50 feet back from their property line?</p> <p>25 A. I can't say that I've seen that often.</p>	<p>1 Ozark quarry?</p> <p>2 A. These documents right here?</p> <p>3 Q. Yes, sir.</p> <p>4 A. No.</p> <p>5 Q. Okay. What else would there be?</p> <p>6 A. There's an additional map that's not here.</p> <p>7 Q. Okay. And what's the additional map?</p> <p>8 A. It's the highlighted map for the amendment.</p> <p>9 Q. Okay. Other than the highlight -- and it's</p> <p>10 the same map, it just has highlights on it; is that</p> <p>11 right?</p> <p>12 A. It's not exactly the same map, no. It's a</p> <p>13 different orientation of the site.</p> <p>14 Q. Okay. So we have an additional map that</p> <p>15 goes with Applicant's 6; is that right?</p> <p>16 A. That came in with the amendment application,</p> <p>17 yes.</p> <p>18 Q. All right. So I've got MP-5 plus the site</p> <p>19 information sheet. I've got Applicant's 6 plus the</p> <p>20 additional map. Is there anything else that the Land</p> <p>21 Rec Commission considers to be part of the Magruder</p> <p>22 application? I just want to make sure I've got the</p> <p>23 entire document now that you're --</p> <p>24 A. There's -- like, as I said in the very</p> <p>25 beginning, there's additional bonding documents that</p>

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<p>1 are not included in any of these exhibits here.</p> <p>2 Q. And what do these bonding documents show?</p> <p>3 A. The bonding documents show increases in the</p> <p>4 bonding amount to cover the 90 acres. And as I</p> <p>5 stated, there was some -- the bonding had to come in</p> <p>6 for this permit which affects this expansion because</p> <p>7 it's all one permit, it's all one bond, it's a</p> <p>8 surety, I believe, so when they expand or amend other</p> <p>9 sites on their permit, then that changes. So I</p> <p>10 have... There's two or three additional bonding</p> <p>11 documents that are not included in any of these</p> <p>12 exhibits.</p> <p>13 Q. Okay. And would those additional bonding</p> <p>14 documents be financial information to show proof that</p> <p>15 if Magruder does not reclaim that you can make a</p> <p>16 claim on the bond on behalf of the Land Reclamation</p> <p>17 Commission?</p> <p>18 A. Yes.</p> <p>19 Q. So I've got the additional bonding</p> <p>20 documents, I've got MP-5, I've got Applicant's 6,</p> <p>21 I've got the additional map to Applicant's 6 and I've</p> <p>22 got the site information sheet for MP-5. Is there</p> <p>23 anything else that is part of the application that</p> <p>24 has been -- that the Land Rec Commission considers</p> <p>25 from Magruder Limestone for the Lake Ozark quarry?</p>	<p>1 Q. And they wouldn't have to stop at a certain</p> <p>2 level. They could quarry deeper if they chose to</p> <p>3 change their intent?</p> <p>4 A. Correct.</p> <p>5 Q. And there wouldn't -- so once this permit is</p> <p>6 granted, they have the ability to go in and quarry in</p> <p>7 any manner that they so choose, so long as it's on</p> <p>8 bonded land?</p> <p>9 A. Correct.</p> <p>10 Q. And, in fact, they could choose to blast and</p> <p>11 operate in any fashion they so choose because you</p> <p>12 don't regulate blasting; isn't that true?</p> <p>13 A. Well, the Land Reclamation Program does not</p> <p>14 regulate blasting, but that doesn't mean they could</p> <p>15 blast any way that they could choose. It is</p> <p>16 regulated by the fire marshal.</p> <p>17 Q. The fire marshal regulates permitting for</p> <p>18 blasting, right?</p> <p>19 A. Correct, at this time.</p> <p>20 Q. There is no regulation on -- by the fire</p> <p>21 marshal on the operation of actual blasts; isn't that</p> <p>22 true?</p> <p>23 A. I'm not sure exactly what is in the</p> <p>24 regulations the fire marshal has.</p> <p>25 Q. For purposes of this permit and the Land</p>
Page 123	Page 125
<p>1 A. I don't believe so. I think that's all the</p> <p>2 paperwork.</p> <p>3 Q. All right. You mentioned in response to Mr.</p> <p>4 Brownlee that Magruder could change their intent,</p> <p>5 they might not mine the whole 205 acres. Do you</p> <p>6 remember this questioning?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Once this permit is granted and</p> <p>9 Magruder bonds whatever land it decided it wants to</p> <p>10 quarry on, is there any other permit from the Land</p> <p>11 Rec Commission that is required before they can start</p> <p>12 excavating and quarrying on that bonded land?</p> <p>13 A. Any additional permit?</p> <p>14 Q. Yes.</p> <p>15 A. No.</p> <p>16 Q. And we've heard some representations about</p> <p>17 how Magruder plans to mine and taking down a hill.</p> <p>18 Do you remember -- are you generally familiar with</p> <p>19 that? You've heard about it in depositions?</p> <p>20 A. Yes.</p> <p>21 Q. All right. Magruder, if this permit is</p> <p>22 granted, would be allowed to change their intent and</p> <p>23 quarry in other areas besides that one hill so long</p> <p>24 as the land is bonded; isn't that correct?</p> <p>25 A. That's correct.</p>	<p>1 Reclamation review, is it true that if the permit is</p> <p>2 granted, so long as Magruder bonds whatever lands it</p> <p>3 chooses to quarry on, they could go in and quarry on</p> <p>4 any of the land within the mine plan area and they</p> <p>5 could do it as deep as they wanted?</p> <p>6 A. That's correct.</p> <p>7 Q. Last thing. I believe you testified that</p> <p>8 you've never received any leases for any of the</p> <p>9 permits that you've reviewed; is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. So if the permit is granted here, you don't</p> <p>12 anticipate that Magruder's actually going to send you</p> <p>13 the lease that they say they're going to enter into</p> <p>14 with Eolia Development, true?</p> <p>15 A. They're not required to.</p> <p>16 Q. So there is nothing which the Land Rec</p> <p>17 Program will ever have that will show that, in fact,</p> <p>18 there is a valid existing lease between Eolia</p> <p>19 Development and Magruder if there's not a lease</p> <p>20 that's already been signed today?</p> <p>21 A. I can't say that the Land Reclamation</p> <p>22 Program will never have that. I can say it's not</p> <p>23 required.</p> <p>24 Q. So you're not going to make them give you a</p> <p>25 copy of the lease to actually prove that they have a</p>

<p style="text-align: right;">Page 126</p> <p>1 legal right to mine this land if, in fact, the permit 2 is granted? 3 A. No, we would not require them to give us the 4 lease agreement. 5 MR. MAUER: Nothing further. 6 HEARING OFFICER: All right. Thank 7 you. Any redirect on the points covered in the 8 recross? 9 MR. DUGGAN: No, your Honor. 10 HEARING OFFICER: Mr. Brownlee? 11 MR. BROWNLEE: I don't believe so. 12 HEARING OFFICER: All right. That 13 concludes presentation of this witness. The Hearing 14 Officer has no questions. Before we break, 15 Mr. Duggan, you wish to move Applicant's 4 into the 16 record? 17 MR. DUGGAN: Well, let me just state 18 this about the various exhibits we've talked about: 19 We would move to admit Applicant 2, a copy of the 20 regulations. 21 HEARING OFFICER: Okay. Restate 22 that. I'm sorry. I didn't hear it. 23 MR. DUGGAN: We'll move to admit 24 Applicant 2, a copy of the regulations. 25 HEARING OFFICER: All right. Any</p>	<p style="text-align: right;">Page 128</p> <p>1 Seeing no objection, it is stipulated into the 2 record. 3 Can we do likewise relative to Applicant's 4 4, 5 and 6? Again those are all documents testified 5 to by Mr. Roberts. Hearing no objection, they are 6 received. They are stipulated into the record, then. 7 All right. Then we have Applicant's 2, 3, 8 4, 5, 6 and McGovern Petitioner 5 received into the 9 record. 10 MR. DUGGAN: Now, I want to make one 11 other comment with respect to the map. Apparently, 12 an original map can be located in the file. 13 HEARING OFFICER: That's my 14 understanding. 15 MR. DUGGAN: And it has highlighted 16 information on that. We are willing to locate that 17 map and bring it down here and make whatever 18 arrangements you deem appropriate so everybody has a 19 copy of the highlighting on that map. 20 HEARING OFFICER: I want to -- I want 21 to establish, how large a map is it? 22 MR. DUGGAN: I do not know. 23 MR. ROBERTS: It's just a regular 24 eight by ten. And it's not only highlighted, it's 25 got crosshatchings on it also to identify the bonded</p>
<p style="text-align: right;">Page 127</p> <p>1 objection? 2 MR. MCGOVERN: No. 3 HEARING OFFICER: No objections. It 4 is received. 5 MR. DUGGAN: And Applicant 3, a copy 6 of the statute. 7 HEARING OFFICER: Any objections? 8 MR. MCGOVERN: No. 9 HEARING OFFICER: No objections. It 10 is received. 11 MR. DUGGAN: Now, with respect to the 12 remaining exhibits this witness talked about, we 13 would stipulate to their admission, but we can't lay 14 a foundation for any of them. We talked about them 15 only in terms of they are documents we received and 16 included in the file, but we can't authenticate them. 17 So if the other parties will stipulate to their 18 admission, we're more than happy to join that 19 stipulation. 20 HEARING OFFICER: All right. Let me 21 just put it this way: First of all, I have Mr. 22 McGovern's Petitioner Exhibit 5, the permit 23 application and the cover letter which Mr. Roberts 24 has testified to, identified. Is there any 25 objection? Can we stipulate that into the record?</p>	<p style="text-align: right;">Page 129</p> <p>1 area. 2 HEARING OFFICER: What I'd like to 3 do, let's locate the map and get it here and see, 4 because apparently it doesn't reproduce well and so 5 we may simply have to -- I want something as far as 6 the Commission record that demonstrates that or shows 7 that from what was actually submitted with the 8 application which we've had testimony to that we've 9 had questioning about. So I just want the document. 10 It will speak for itself. So let's locate that as 11 quickly as we can. 12 I propose we take a recess for lunch now. 13 There is cafeteria service outside of here. I really 14 would like to reconvene as quickly as possible. Do 15 you think we can get all back in here and assembled 16 within about 45 minutes? Does that seem doable? Do 17 some of you need to go out? 18 MR. BROWNLEE: Yeah, I probably... 19 HEARING OFFICER: You really need to 20 run out? Can you be back by 1:00? 21 MR. BROWNLEE: (Nods.) 22 HEARING OFFICER: All right. Let's 23 be back by 1:00. That way if you need to call the 24 office or take care of other things. With that, we 25 are off the record.</p>

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<p>1 (Luncheon recess.)</p> <p>2 HEARING OFFICER: We're back on the</p> <p>3 record. Mr. Duggan, you're recognized to call your</p> <p>4 next witness.</p> <p>5 MR. DUGGAN: Bill Zeaman.</p> <p>6 HEARING OFFICER: Mr. Zeaman, would</p> <p>7 you come forward and raise your right hand.</p> <p>8 WILLIAM ZEAMAN,</p> <p>9 of lawful age, produced, sworn, and examined on</p> <p>10 behalf of the DNR, deposes and says:</p> <p>11 EXAMINATION</p> <p>12 QUESTIONS BY MR. DUGGAN:</p> <p>13 Q. Please state your name.</p> <p>14 A. William Stuart Zeaman.</p> <p>15 Q. Where do you work, Mr. Zeaman?</p> <p>16 A. Missouri Department of Natural Resources</p> <p>17 Land Reclamation Program.</p> <p>18 Q. What is your job responsibility with the</p> <p>19 Land Reclamation Program?</p> <p>20 A. I am the chief of the non-coal unit. That</p> <p>21 is a supervisory position.</p> <p>22 Q. What does the non-coal unit include?</p> <p>23 A. The industrial minerals and metallic</p> <p>24 minerals law.</p> <p>25 Q. What is your relationship with Mitch</p>	<p>1 Q. Okay. How much interaction did you have</p> <p>2 with Mitch Roberts with respect to his review of this</p> <p>3 application?</p> <p>4 A. None until about day 37 of the public notice</p> <p>5 comment period.</p> <p>6 Q. And what did you do at day 37?</p> <p>7 A. I asked Mitch if we, in fact, had an</p> <p>8 application in, and he responded yes, we did. And I</p> <p>9 then replied to the Stockmans that yes, we, in fact,</p> <p>10 had the application in. I just reviewed it and just</p> <p>11 looked at the general location area to figure out</p> <p>12 where this was at, and I recognized it as being in</p> <p>13 the location of another hot topic area.</p> <p>14 Q. Did you become involved in the public</p> <p>15 comment process for this application?</p> <p>16 A. As far as the public comment process as far</p> <p>17 as at what point in the public comment process?</p> <p>18 Q. Did you review public comments?</p> <p>19 A. Yes, I did review public comments as they</p> <p>20 came in.</p> <p>21 Q. I would like to hand you what has been</p> <p>22 marked BP-2 and ask if you can identify that exhibit?</p> <p>23 A. This is a quite lengthy exhibit consisting I</p> <p>24 don't know of how many pages. Do you want me to go</p> <p>25 through each page and identify each one if I can</p>
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<p>1 Roberts?</p> <p>2 A. He is, in fact, one of the individuals I</p> <p>3 supervise in my position.</p> <p>4 Q. How long have you worked in this position?</p> <p>5 A. Just a little bit over a year. It would</p> <p>6 have been March of -- a year ago March. March '07 is</p> <p>7 when I started.</p> <p>8 Q. You are familiar with the application that</p> <p>9 is the subject of this hearing; is that right?</p> <p>10 A. Correct.</p> <p>11 Q. What was your role with respect to this</p> <p>12 particular application?</p> <p>13 A. My role became involved when, in fact, the</p> <p>14 Stockmans telephoned me to ask if we had an</p> <p>15 application in concerning this quarry site, and I, in</p> <p>16 fact, replied yes, we do have an application. And</p> <p>17 that's when I became aware of it and became involved</p> <p>18 with it.</p> <p>19 Q. And why did you become involved with it at</p> <p>20 that point?</p> <p>21 A. Mainly because we also had another</p> <p>22 application real similar in a similar location that</p> <p>23 drew a lot of public knowledge and participation and</p> <p>24 became quite active within the Program, such as this</p> <p>25 one is now.</p>	<p>1 testify to it?</p> <p>2 Q. Do you recognize the exhibit in the</p> <p>3 aggregate?</p> <p>4 A. Yes.</p> <p>5 Q. What is that?</p> <p>6 A. These are comment letters and requests for</p> <p>7 meetings and hearings based on the running of the</p> <p>8 public notice or during the public notice comment</p> <p>9 period.</p> <p>10 Q. Okay. And these were received by the Land</p> <p>11 Reclamation Program?</p> <p>12 A. Correct.</p> <p>13 Q. Do they show date stamps as to when they</p> <p>14 were received, by the way?</p> <p>15 A. Yes, I believe they do.</p> <p>16 Q. Okay. I'd like to show you BP-1. And if</p> <p>17 you could just in general explain what that exhibit</p> <p>18 includes.</p> <p>19 A. BP-1, the letter dated June 21st, 2007, is,</p> <p>20 in fact, a letter to Dean McDonald stating that we</p> <p>21 have received a number of requests for a public</p> <p>22 meeting, and we asked -- and we asked the company to</p> <p>23 reply, in fact, if they would entertain a public</p> <p>24 meeting.</p> <p>25 Q. Okay.</p>

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<p>1 A. There's also other letters in here dated</p> <p>2 different -- that have different dates, and I'd have</p> <p>3 to go through each one to give you an idea of what</p> <p>4 each letter and date -- or what each dated letter</p> <p>5 refers to. Is that what you were wanting?</p> <p>6 Q. Well, let's start with the one on top.</p> <p>7 A. Okay.</p> <p>8 Q. That's the letter to Dean McDonald asking if</p> <p>9 Magruder would be interested in a public meeting; is</p> <p>10 that right?</p> <p>11 A. Correct.</p> <p>12 Q. And you mentioned that you had received</p> <p>13 requests for a public meeting?</p> <p>14 A. Correct.</p> <p>15 Q. Would those requests be included in the</p> <p>16 first exhibit that I handed you?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. What do you have in Exhibit BP-1</p> <p>19 besides that first letter?</p> <p>20 A. There's also a July 17th, 2007, letter to a</p> <p>21 Mr. Baker, and I have to review it real quickly to</p> <p>22 inform you exactly what it says. This is a letter</p> <p>23 that we received -- a response to Mr. Baker that, in</p> <p>24 fact, we did receive his letter requesting a formal</p> <p>25 hearing and that it would be presented to the Land</p>	<p>1 Notice of Recommendation and Attachment 1. It is a</p> <p>2 response to the comments that we received.</p> <p>3 Q. Okay. Who prepared that document?</p> <p>4 A. I prepared the draft of that document.</p> <p>5 Q. Okay. And what was the purpose of that</p> <p>6 document?</p> <p>7 A. This document was -- it's a requirement</p> <p>8 after we receive letters and to proceed on with --</p> <p>9 proceed on with the process after we know that the</p> <p>10 company does not want to hold a public meeting but we</p> <p>11 have had a request for a hearing is that we would</p> <p>12 prepare this document in preparation for the</p> <p>13 September -- or for a Commission meeting.</p> <p>14 Q. Did you prepare it for someone else's</p> <p>15 signature?</p> <p>16 A. Yes. For Staff Director Larry Coen.</p> <p>17 Q. And it was to be presented at the Commission</p> <p>18 meeting on September 27th?</p> <p>19 A. Correct.</p> <p>20 Q. And was it presented to the Commission at</p> <p>21 that time?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 A. Most likely. The commissioners do receive</p> <p>25 it about two weeks in advance of the meeting, and it</p>
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<p>1 Reclamation Commission at their February 27th, 2007,</p> <p>2 meeting as a request for a hearing.</p> <p>3 Q. Okay. What's the next letter after that?</p> <p>4 A. I have a July 3rd, 2007, letter to</p> <p>5 Mr. Michael and Jacqueline Atkisson. And, in fact,</p> <p>6 this one also noted a response to Mr. Atkisson and</p> <p>7 Mrs. Atkisson about that we did receive a request for</p> <p>8 a formal hearing and that we would present that</p> <p>9 request at the Land Reclamation Commission meeting on</p> <p>10 September 27th, 2007.</p> <p>11 Q. Okay. Now, these letters that acknowledge</p> <p>12 their request for a formal hearing, were those sent</p> <p>13 after Magruder indicated it was not interested in a</p> <p>14 public meeting, if you know?</p> <p>15 A. June 21st. I am going to state that most</p> <p>16 likely they was -- it was after, because these</p> <p>17 letters, the second and third letter, are dated</p> <p>18 July 17th and July 3rd. We sent our letter to the</p> <p>19 Magruder, Mr. Dean McDonald, on the 21st, and I think</p> <p>20 shortly after the 21st we received a phone call or</p> <p>21 some type of response from Dean saying that they were</p> <p>22 not interested in entertaining a public meeting.</p> <p>23 Q. Okay. I'm going to hand you BP-3 and ask if</p> <p>24 you can identify that document.</p> <p>25 A. Yes. BP-3 is, in fact, the Staff Director's</p>	<p>1 may even have went out to the commissioners on</p> <p>2 July 13th, the date that it was prepared.</p> <p>3 Q. Okay.</p> <p>4 A. But the -- it was in preparation for that</p> <p>5 meeting.</p> <p>6 Q. Okay. And you're the one who takes</p> <p>7 authorship responsibility for the summary of the</p> <p>8 Program's -- the public comments the Program received</p> <p>9 and responses to those comments?</p> <p>10 A. Yes, I do accept that responsibility.</p> <p>11 Q. Okay. Bill, do you recall what, if</p> <p>12 anything, you did following that Commission meeting?</p> <p>13 A. After the September 27th meeting?</p> <p>14 Q. Yes.</p> <p>15 A. I believe the next involvement -- there was</p> <p>16 a pretty good time gap in between the meeting and our</p> <p>17 next involvement. We may have had discussions about</p> <p>18 what kind of game plan is going on in preparation for</p> <p>19 the hearing and organization meetings, for instance,</p> <p>20 the January meeting that we did have at the Lake of</p> <p>21 the Ozarks. And there was also another pre-hearing</p> <p>22 meeting that we had with Mr. Brownlee and the</p> <p>23 Troutwine and Magruder group.</p> <p>24 Q. Well, let me go back to something you may</p> <p>25 have done in a formal matter.</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 MR. DUGGAN: This is an exhibit I'm 2 going to offer. Some of those NOV's may be part and 3 parcel of other exhibits -- 4 HEARING OFFICER: All right. 5 MR. DUGGAN: -- of the other parties, 6 but what I am confident that Mr. Zeaman will say 7 about this is this was his collection of violation 8 histories from other programs within the Department 9 after the hearing was over. 10 HEARING OFFICER: All right. I'm 11 going to mark this simply as Respondent's Exhibit 1, 12 then, Exhibit RP-1, and Mr. Duggan, you can have the 13 witness identify it. 14 Q. (By Mr. Duggan) Could you take a look at 15 RP-1 for us and tell us what it is? 16 A. Yes. RP-1 is an e-mail that I wrote and 17 prepared for Larry Coen to send out to other staff 18 directors asking the other staff directors if there's 19 been any violations issued to Magruder Limestone 20 within five years prior to receiving the permit 21 application. 22 Q. And the reason for preparing that is stated 23 in the body of that e-mail that you wrote; is that 24 correct? 25 A. Correct.</p>	<p style="text-align: right;">Page 140</p> <p>1 meeting of the Commission? 2 A. Yes. The reason we don't -- we don't do it 3 prior to a Commission meeting is that a hearing has 4 to be ordered for this information to be relevant. 5 Q. And, again, is that your standard operating 6 procedure? 7 A. Yes. 8 MR. DUGGAN: I don't have any other 9 questions. 10 HEARING OFFICER: Mr. Brownlee, do 11 you wish to call this witness in support of the 12 Applicant's position? 13 MR. BROWNLEE: Well, yeah, I've got a 14 few questions. 15 HEARING OFFICER: Proceed. 16 EXAMINATION 17 QUESTIONS BY MR. BROWNLEE: 18 Q. Mr. Zeaman, you know my name is Richard 19 Brownlee and I represent Magruder. Would you make 20 reference to Exhibit BP-2 that you have? 21 A. (Complies.) 22 Q. And, again, those are the comment letters 23 that either you received from the public requesting 24 either a meeting or a public hearing, correct? 25 A. Correct.</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. If you can just summarize why you took this 2 action. 3 A. Yes. It's to establish a pattern of 4 non-compliance within the rules. Whenever a hearing 5 is requested, it can be -- past violations can be 6 used against a company if those violations fulfill 7 requirements of the law and also, I believe, the 8 regulations as well. And it's five years prior -- 9 and it's limited to a five-year period immediately 10 preceding the date of the permit application. 11 Q. Okay. And you gathered this information 12 because the statute talks about it; is that right? 13 A. Correct. It's somewhat standard operating 14 procedures whenever this happens that we ask other 15 programs if there's been past violations. 16 Q. Okay. And what is your intent to use -- how 17 do you intend to use this information once you've 18 gathered it? 19 A. It's mainly for review. I'm aware that 20 other lawyers would most likely be interested did you 21 ask for any other past violations or whatever 22 information has been collected on violations, and 23 therefore we just always ask for it right upfront. 24 Q. Okay. Is there any reason you didn't 25 conduct that inquiry prior to the September 27th</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. Without taking undue time, do you know how 2 many letters you have there? 3 A. Between 30 and 45, somewhere -- is that what 4 you're looking for? 5 Q. Yeah. Yeah. 6 A. Approximately that. 7 Q. And are they from people in Osage Beach or 8 Miller County? I don't have that exhibit right in 9 front of me. 10 A. The majority of the folks are -- who wrote 11 in are usually off of Wood River Road or somewhere 12 really close to where the proposed quarry is located. 13 There may be one or two -- I know that there are some 14 from the City of Osage Beach and also from Mayor 15 Lyons. And there may be a few other -- others who 16 are not right off of Wood River Road, but my belief 17 is that they're right in the general area. 18 Q. Well, without going through -- and, again, I 19 didn't know this was for sure going to come in. 20 Without looking and analyzing each letter, it would 21 appear that a great majority of these letters are all 22 exactly the same except for the person that signed 23 them. 24 A. That's correct. 25 Q. Fair statement?</p>

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<p>1 A. That's correct. There is one -- there's a 2 general form letter, is what we generally refer to 3 them as. They state the exact same information with 4 different signatures. 5 Q. So except for a very few that apparently may 6 have been individually written by one of the persons, 7 this appears to be a form letter that someone 8 prepared for the group and asked them to please sign 9 this and send it in, does it not? 10 A. That's a fair statement, yes. 11 Q. And does that often happen when you've had a 12 case where there's been a protest and a request for a 13 hearing, request for a public meeting and stuff? 14 A. Not in all cases. There is one other case 15 in particular that I'm -- that I'm thinking of where 16 somebody essentially stood at Wal-Mart parking lot 17 and asked for signatures on a form letter. 18 Q. Well, that may have happened here, for that 19 matter, could it not? 20 MR. MAUER: Objection. Calls for 21 speculation. 22 HEARING OFFICER: Sustained. 23 Q. (By Mr. Brownlee) So it appears that 24 someone has organized this protest that's represented 25 by the numerous letters that we have exhibited in</p>	<p>1 Q. Now, attached to that document there's 2 apparently an analysis of various public comments 3 that had been obtained, correct? 4 A. In Attachment 1, yes, there's comments, what 5 the comments were and what those responses -- 6 Q. And those comments actually pretty well 7 summarize what we've been talking about here for the 8 last month or so, do they not? 9 MR. MCGOVERN: Objection. Best 10 evidence. How can you possibly characterize all 11 those letters as summarizing what we've discussed 12 over the last month? 13 MR. BROWNLEE: They're all the same. 14 Most of them are exactly the same. 15 MR. MCGOVERN: Well, you've added to 16 it what we've discussed over the last month. I'm 17 just not sure what that regards. 18 HEARING OFFICER: Since I haven't 19 been engaged in a hearing except for one day last 20 month, the objection is sustained. Again, the 21 document, BP-3, say that three times quickly, speaks 22 for itself. 23 Q. (By Mr. Brownlee) Well, when you prepared 24 that, was it your opinion as your job that this 25 application was complete at that time?</p>
Page 143	Page 145
<p>1 BP-2, correct? 2 A. Correct. 3 MR. MAUER: Objection. Calls for 4 speculation. 5 HEARING OFFICER: Sustained. 6 Q. (By Mr. Brownlee) Well, let's go to the 7 next thing. If that's true, whatever the motive was 8 in preparing it, it's obvious, is it not, from the 9 number of people that sent this in the public was 10 completely aware of this application? 11 MR. MAUER: Objection. Calls for 12 speculation, and vague and ambiguous as to the 13 public. 14 HEARING OFFICER: Sustained. The 15 documents speak for themselves, Mr. Brownlee, and 16 they obviously indicate that those persons had 17 knowledge of and wrote in their letters and had 18 opportunity to request a formal public hearing if 19 they wanted to. The documents speak for themselves. 20 MR. BROWNLEE: All right. Thank you. 21 Q. (By Mr. Brownlee) And let me ask you -- and 22 let's reference to BP-3. And, again, that's the 23 document that you sort of ghosted for Mr. Coen's 24 ultimate signature; is that correct? 25 A. Correct.</p>	<p>1 A. Yes. 2 Q. And did you later change your mind about 3 that? 4 A. Once additional information came to my 5 knowledge, yes, I was aware that it wasn't 6 100 percent complete as what it should have been when 7 we prepared this document. 8 Q. Okay. And who supplied that additional 9 information to you? 10 A. One was the sewer treatment plant, 11 whoever -- Penny Lyons was the board of the sewer 12 treatment plant. She identified that, in fact, there 13 was an easement that was on that property. And then 14 during our visit down at Lake of the Ozarks in 15 January of this year. 16 Q. So you've identified some additional 17 information was the location of this sewer easement. 18 That's one thing, correct? 19 A. Correct. 20 Q. And I think in your deposition you also said 21 that the application may have been incomplete because 22 it did not include information regarding the 23 post-reclamation land use. 24 A. Post-mining land use was not identified on 25 the detail map.</p>

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<p>1 Q. So in your deposition, I think, Mr. Zeaman, 2 you just said it wasn't identified in the permit, but 3 now you're saying it wasn't on the map? 4 A. It was not identified on the post-mining 5 land -- the detailed map, which is part of the permit 6 application. 7 Q. But it was included in the actual 8 application, was it not? 9 A. The post-mining land use is, in fact, 10 identified on Page 4 or 5 of the mine plan. 11 Q. So the deficiency that you're testifying to, 12 if it were a deficiency, is merely it wasn't included 13 on the map, correct? 14 A. Correct. 15 Q. Okay. But it was included on Page 4 of the 16 actual Land Reclamation form up in the grading where 17 it talks about reclaimed topography will most likely 18 be used for commercial development and a little more, 19 and then at the bottom, Use of Land When Reclaimed, 20 Section D, it's got checked Development, quote, 21 "Residential, Industrial and Recreational, 205 22 acres"? 23 A. It is, in fact, on Page 4 or 5 of the mine 24 plan. 25 Q. So anybody reading this could -- if they</p>	<p>1 development. We simply have the companies write in 2 post-mining land use equals 100 percent development. 3 So it won't -- it's not going to be a crosshatching 4 and all this area equals development. 5 Q. It doesn't show up as a picture if there's 6 not lakes and stuff like that included, so if we 7 wanted to, as we indicated, to do 205 acres, it would 8 just show a flat area, maybe, 205 acres cross 9 checked. Is that what the map would look like? 10 A. Development land use isn't required that it 11 is all, in fact, leveled as what you're suggesting. 12 There could be high walls left, especially at the 13 property line. Generally speaking, when it's all 14 geared to one specific land use, we have the company 15 put on, note, post-mining land use equals 100 percent 16 whatever that case may be. 17 Q. And the map that was submitted with the 18 supplemental information apparently had this little 19 notation correct to your satisfaction. Is that a 20 fair statement? 21 MR. MAUER: I'm going to object that 22 I think that mischaracterizes the evidence. 23 HEARING OFFICER: Wait just a moment. 24 Let me look at the evidence. 25 MR. BROWNLEE: That's Exhibit...</p>
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<p>1 didn't look at the map, they could at least see that 2 it was complied with within the context of the actual 3 application form drafted by Land Reclamation? 4 A. It was at least identified clearly on Page 4 5 or 5 of the mine plan. 6 Q. Okay. And regarding the deficiency that you 7 talk about on the map, what was the map going to show 8 that might occur in post-reclamation use in 40 years 9 or 60 years or 100 years? What was that map that you 10 said was deficient supposed to show? 11 A. That, in fact, the land -- the post-mining 12 land use. 13 Q. Well, I mean, if we're going to level the 14 entire 205 acres and sell it to Wal-Mart for a 15 Supercenter, storage, I mean, what's that map 16 supposed to look like, Mr. Zeaman, that you said was 17 deficient? 18 A. It was, in fact, supposed to identify the 19 post-mining land use as required by the regulations. 20 Q. But I want to know, how does that look on a 21 map? If I wanted to look at that map that you said 22 was deficient, what would it look like, Bill? 23 A. It could be one way when, in fact, all of 24 the reclamation is geared to one specific land use, 25 such as water or wildlife or in this case</p>	<p>1 HEARING OFFICER: Which one is it? 2 The supplement, which has been received as 3 Applicant's 6? No. Yeah. Applicant's 6. Is that 4 what we're dealing with? 5 MR. MAUER: Yes. 6 MR. BROWNLEE: We've got so many 7 exhibit maps, I'm kind of... 8 HEARING OFFICER: Can you read the 9 question back to me that Mr. Brownlee asked. 10 (Whereupon, the requested portion of 11 the record was read by the reporter as follows.) 12 HEARING OFFICER: And the objection 13 was that it mischaracterizes the evidence? 14 MR. MAUER: Yes, your Honor. I don't 15 think it's been clear in the record yet. We have two 16 different maps and -- 17 HEARING OFFICER: Neither one of the 18 maps have it on the map, per se. The first map, 19 which is the one which is highlighted with the yellow 20 wedge, does not. The second map does not have on the 21 map, but at the bottom of the page it says, 22 "100 percent development post-mine use." So I am 23 taking that the map includes the document -- or the 24 writing underneath that map so that it does have 25 100 percent development post-mine use.</p>

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<p>1 MR. BROWNLEE: That's what I was 2 addressing. 3 MR. MAUER: And, Mr. Tichenor, what 4 my objection is trying to get to is, I don't think 5 it's been established which of the two maps came with 6 Applicant's Exhibit 6 because I do not believe -- 7 HEARING OFFICER: Both of them did. 8 MR. MAUER: Well, I don't think that 9 could be correct, because the one that Mr. Roberts 10 gave me with the yellow wedge is stamped received 11 Land Reclamation Commission February 1st, 2008. 12 HEARING OFFICER: Which one is 13 stamped February 1st? 14 MR. MAUER: This one. February 1st, 15 2008. Here. And this one doesn't have the similar 16 stamp, but it's got a Google date of -- or a fax 17 date -- 18 HEARING OFFICER: Mine's got 19 February 7th. 20 MR. MAUER: So I don't know which 21 came with which. That was the import of my 22 objection. 23 HEARING OFFICER: My understanding 24 was the testimony previously elicited from 25 Mr. Roberts were both of these were part of the</p>	<p>1 lack of foundation. 2 HEARING OFFICER: Lack of foundation? 3 MR. MAUER: I just don't think it's 4 been clearly identified in the record when these maps 5 came in or that they were part of the supplement. 6 That's all I was making my objection on. 7 HEARING OFFICER: Mr. Roberts, you're 8 still under oath. Did you handle the application for 9 the bonding of the additional 90 acres. 10 MR. ROBERTS: Yes. 11 HEARING OFFICER: I understood your 12 testimony this morning was that both of those maps 13 came in at some point. 14 MR. ROBERTS: Correct. 15 HEARING OFFICER: Okay. That's all I 16 need to know. It's been established. Foundation's 17 been laid. Let's move on. 18 Q. (By Mr. Brownlee) This notation that 19 100 percent development post-mine use, does that now 20 to your satisfaction make that complete? 21 A. Yes. 22 Q. Even though it's not shown on the map, it's 23 just the notation in writing? 24 A. I believe that that's -- that's usually our 25 standard procedures as notifying that, in fact, it's</p>
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<p>1 amendment for the additional 90 acres of bonding. 2 Whether they came in simultaneously, I don't know, 3 but that's what I understood. Let the Hearing 4 Officer ask one question of the witness. I thought 5 I'd covered all the regulations. What regulation are 6 you referring to that requires the post-reclamation 7 land use be on the map? 8 MR. ZEAMAN: May I have the -- it's 9 down at the bottom of... "And post-mining land use 10 description shall be identified on the detail map." 11 HEARING OFFICER: "Location of 12 terraces, waterways, diversions and post-mine land 13 use designation shall be identified on the Program 14 map." All right. So that is Sub G of Item (e), 15 (e)2g. All right. With that, I guess we can go 16 through recalling Mr. Roberts to see what all was put 17 in here, but I really don't care whether they came in 18 simultaneously, whether they came in three days 19 apart, four days apart, they are part of what has 20 been submitted now, and as far as I'm concerned they 21 were established that those two maps were part of the 22 additional bonding on the 90 acres, so they are 23 before the Commission. So the objection as far as 24 mischaracterizing the evidence... 25 MR. MAUER: And my objection was also</p>	<p>1 on the map and that, in fact, 100 percent of that 2 land use is now development. 3 Q. Now, when you wrote the recommendation and 4 you wrote the attachment for Exhibit PB-3, okay -- 5 A. BP-3? 6 Q. BP-3. I'm sorry. At that time you'd 7 already received additional information regarding 8 sewer lines and easements and all of this, yet you 9 still recommended approval, did you not? 10 A. Correct. 11 Q. Well, if you have a problem today with what 12 was submitted, why didn't you tell us back then a 13 year ago? 14 A. I, in fact, did not know that the map -- I 15 did not look at that closely -- I did not look that 16 closely at the map. I, in fact, went off the 17 recommendation of Mitch Roberts that, in fact, it was 18 complete. 19 Q. But clearly in your attachment to Exhibit 20 BP-3 you talked about the easement, the sewer lines, 21 all of those things, yet you still recommended 22 approval for Mr. Coen, correct? 23 A. Correct. 24 Q. And yet today you're saying there were 25 deficiencies you knew, but you didn't include them in</p>

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<p>1 that recommendation, or even mention them, did you, 2 sir? 3 A. Correct. 4 Q. Is there a reason for that? 5 A. I simply didn't go through the regulations 6 with a fine-tooth comb and state, oh, heck, we needed 7 that easement on there. 8 MR. BROWNLEE: I have nothing 9 further. 10 HEARING OFFICER: Mr. McGovern, 11 cross-examination? 12 MR. MCGOVERN: Thank you. 13 EXAMINATION 14 QUESTIONS BY MR. MCGOVERN: 15 Q. Mr. Zeaman, in your position as unit chief, 16 I think you indicated that, in fact, Mr. Roberts 17 reports to you; is that correct? 18 A. Correct. 19 Q. And one of the job functions that 20 Mr. Roberts serves within your group is to do the 21 completeness review of an application; is that 22 correct? 23 A. That's correct. 24 Q. And at the time this application was 25 submitted, the Magruder application, it was reviewed</p>	<p>1 letter, I don't think you were asked, but the date of 2 that is July 13th, 2007; is that correct? 3 A. Correct. 4 Q. The permit amendment that came in, just so 5 we can get the time line straight, comes in in 6 February of 2008, correct? 7 A. I don't have that right in front of me, and 8 I'm not saying that that's incorrect. I just don't 9 have that exact... 10 Q. If you look at Applicant's Exhibit -- I 11 think Mr. Tichenor just handed it to you, but one of 12 them would be Applicant's Exhibit No. 6. It is a 13 letter from Dean McDonald dated February 5th, 2008, 14 correct? 15 A. February 5th, 2008? 16 Q. Yes. 17 A. Yes. 18 Q. And attached to that correspondence would be 19 the information relative to the increased area for 20 bonding, as well as the detailed site map that now 21 includes the location of the water easement as well 22 as the Ameren easement; is that correct? 23 A. That's correct, along with, I believe, the 24 DGLS fee worksheet, yes. 25 Q. Now, if you look back at BP-3, the letter</p>
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<p>1 by Mr. Roberts; is that right? 2 A. That's correct. 3 Q. And Mr. Roberts indicated to you that he 4 believed at least based upon the information provided 5 by Magruder that it was complete; is that correct? 6 A. That's true. 7 Q. Did you rely on Mr. Roberts' representation 8 to you that it was complete, that that was accurate? 9 A. By all means, yes. 10 Q. And I assume from your responses to the 11 questions of Mr. Brownlee you didn't, then, go back 12 and conduct a whole new completeness review; is that 13 correct? 14 A. And I don't, yes. 15 Q. In fact, you rely on your staff to do that 16 correctly and accurately; isn't that right? 17 A. Exactly. 18 Q. And, in fact, what Mr. Roberts has told us 19 is he in turn is relying upon the Applicant to, in 20 fact, provide all the information required by the 21 regulations; is that correct? 22 A. That's correct. And if we do notice 23 anything that's short, we will ask the Applicant to 24 go ahead and provide that information. 25 Q. And if you take a look at BP-3, which is the</p>	<p>1 dated July 13th, 2007, your recommendations, your 2 drafting this letter was premised upon the 3 information you had at that time; is that correct? 4 A. That's true. 5 Q. In fact, if you look at the first paragraph 6 of that letter -- well, the paragraph after Staff 7 Director's Notice of Recommendation you write, "The 8 Land Reclamation Act that's Section 444.773.3 9 requires that the Staff Director make a formal 10 recommendation regarding the issuance or denial of an 11 applicant's permit," correct? 12 A. And also consider any written comments, 13 true. 14 Q. And you were here for the testimony of 15 Mr. Roberts when we went through the regulations and 16 the statutes, correct? 17 A. Yes. 18 Q. And, in fact, you're aware that within 19 444.773 that one of the conclusions that Mr. Coen has 20 come to is that, in fact, the application is 21 complete, correct? 22 A. That's true. 23 Q. And to be complete, according to what you've 24 written in the letter and again looking at that same 25 paragraph, it says in the last sentence, "My</p>

<p style="text-align: right;">Page 158</p> <p>1 recommendation for approving this expansion 2 application is based on the fact that the company has 3 satisfied the requirements for application 4 completeness," correct? 5 A. That's true. 6 Q. Now, as you sit here today, you now know 7 that that application was not complete as of the date 8 you wrote that letter, correct? 9 A. There's information that should have been 10 listed on the detail map. 11 Q. And some of that information would have been 12 the location of the water easement and the electric 13 Ameren easement, correct? 14 A. Along with the post-mining land use, 15 correct. 16 Q. And Mr. Brownlee's asked you about that one. 17 Now, if I go down in your letter, Mr. Coen's letter 18 that you wrote, down into the next section, Required 19 Components of the Recommendation, you indicate -- and 20 I'm looking at the second sentence -- "Rules 21 10 CSR 40-10.040(2)(A) require that the Director's 22 recommendation be based on several specific items as 23 follows." One is the application's compliance with 24 Section 444.772; is that correct? 25 A. That's correct.</p>	<p style="text-align: right;">Page 160</p> <p>1 A. 772.3. 2 Q. One of the things that's required -- and 3 this is all of the requirements for a complete 4 application -- is "The application for a permit shall 5 be accompanied by a map in a scale and form specified 6 by the Commission by regulation," correct? 7 A. That's true. 8 Q. Now, when you referenced a moment ago that 9 there was some information that was not included, 10 what you were referring to is the deficiencies with 11 respect to the compliance with that section; is that 12 right? 13 A. Exactly. 14 Q. And if you take a look at the regulation -- 15 and now I'm looking at 40 CSR 40-10 over in Section 16 E? 17 A. 10.020? 18 Q. Yes. I'm sorry. Yes. 19 A. E? 20 Q. On Page 4, towards the middle. This would 21 actually be the regulation that was promulgated by 22 the DNR with respect to that information that was 23 noted in 444.772.3, correct? 24 A. Yes. 25 Q. And, in fact, this is the requirement that</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Now, if you would take a look at 444.772 -- 2 HEARING OFFICER: Just a moment. 3 MR. MAUER: That would be Applicant 4 3, I believe. 5 HEARING OFFICER: Applicant 3? 6 MR. MCGOVERN: Yes. 7 MR. MAUER: Which might be right 8 there in front of you. 9 Q. (By Mr. McGovern) Now, I'm looking at 10 444.772, Section 3. 11 A. This is of the rules and regulations, not 12 the law? 13 Q. Hang on to those two. I'm going to ask you 14 about those in a second. This was Applicant's 2. 15 HEARING OFFICER: Okay. Applicant's 16 2 is what you want? 17 MR. MCGOVERN: Yes. 18 MR. MAUER: Applicant's 3. 19 MR. MCGOVERN: Is it 3? 20 HEARING OFFICER: You already have 2. 21 All right. Applicant's 3. All right. He's got 2 22 and 3. Proceed, Mr. McGovern. 23 MR. MCGOVERN: Thank you. 24 Q. (By Mr. McGovern) If you look at 444.772, 25 Section 3?</p>	<p style="text-align: right;">Page 161</p> <p>1 says "One map of sufficient scale and detail to 2 illustrate the following," and then it identifies 3 what information should be included. Do you see 4 that? 5 A. Yes. 6 Q. And is that the section you're referring to 7 within the regulations in which you believe that the 8 application of Magruder was not complete as of 9 July 13th, 2007? 10 A. True. 11 Q. If you look back at BP-3, of course the 12 second component -- this is the letter, BP-3. 13 A. Yes. 14 Q. The Director's recommendation was also based 15 upon the application's compliance with 16 10 CSR 40-10.020, the sections we just went through, 17 correct? 18 A. Correct. 19 Q. And as you sit here today, you now know that 20 as of the date you wrote that letter the application 21 was not in compliance with that section, correct? 22 A. That's true. 23 Q. And, again, your department within your 24 group, you are relying entirely upon the information 25 that the Applicant provides; is that correct?</p>

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<p>1 A. Yes.</p> <p>2 Q. Now, I believe you indicated that the first</p> <p>3 time that you hear from the Stockmans is sometime</p> <p>4 around day 37 of the publication process; is that</p> <p>5 correct?</p> <p>6 A. Of the public notice comment period, yes.</p> <p>7 Exactly.</p> <p>8 Q. And I assume what you mean by that is the</p> <p>9 first public notice would have been published in the</p> <p>10 newspaper at least 36 days prior to their phone call?</p> <p>11 A. Yeah. That's when the public notice comment</p> <p>12 period begins, correct.</p> <p>13 Q. When the Stockmans called you, did they</p> <p>14 indicate to you that they knew there was a project</p> <p>15 coming close to their RV site, or were they asking</p> <p>16 if, in fact, there was a project coming?</p> <p>17 A. They asked me if I was aware of an</p> <p>18 application that was in our office in about that</p> <p>19 exact location where the APAC Hudson Hollow site was</p> <p>20 at.</p> <p>21 Q. And based upon that discussion, you came to</p> <p>22 the conclusion that the Stockmans were not aware of</p> <p>23 whether or not there was such a project --</p> <p>24 MR. BROWNLEE: Objection. That's</p> <p>25 speculation, your Honor.</p>	<p>1 it all leads to, but go ahead.</p> <p>2 MR. MCGOVERN: Well, there's been a</p> <p>3 lot of questions and terms that everybody knew about</p> <p>4 this, all of the public knew about this. I simply</p> <p>5 want to demonstrate when the Stockmans knew about it.</p> <p>6 HEARING OFFICER: I understand, Mr.</p> <p>7 McGovern, but the Stockmans are a party to the</p> <p>8 proceeding, so they were not denied any due process</p> <p>9 in all of this, were they?</p> <p>10 MR. MCGOVERN: I'm simply responding</p> <p>11 to questions asked by Mr. Brownlee just a few moments</p> <p>12 ago. If it was irrelevant, we should have moved on.</p> <p>13 HEARING OFFICER: Restate your</p> <p>14 question. Nobody objected to whether it was relevant</p> <p>15 or not, so... Go ahead, restate your question.</p> <p>16 Q. (By Mr. McGovern) Based upon your</p> <p>17 discussion with the Stockmans, were you able to</p> <p>18 conclude as to whether they knew about this project</p> <p>19 as of the time of the phone call to you?</p> <p>20 A. They had some type of a suspicion that there</p> <p>21 was an application in, and that's as much information</p> <p>22 as I can give you. That's what they asked me, if</p> <p>23 there was an application in.</p> <p>24 Q. And I believe you indicated that would have</p> <p>25 been your first involvement in this project; is that</p>
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<p>1 MR. MCGOVERN: Can I finish the</p> <p>2 question?</p> <p>3 HEARING OFFICER: Finish the</p> <p>4 question.</p> <p>5 Q. (By Mr. McGovern) Based upon your</p> <p>6 discussion with the Stockmans, did you conclude that</p> <p>7 the Stockmans were not aware of this project at the</p> <p>8 time of their phone call to you?</p> <p>9 HEARING OFFICER: And the objection</p> <p>10 is?</p> <p>11 MR. BROWNLEE: It's speculation.</p> <p>12 He's having to conclude what the Stockmans were</p> <p>13 thinking. I mean, it's the purest --</p> <p>14 HEARING OFFICER: The question as I</p> <p>15 understand it is did he conclude.</p> <p>16 MR. MCGOVERN: Correct.</p> <p>17 HEARING OFFICER: What was his</p> <p>18 conclusion, not, in fact, whether...</p> <p>19 MR. MCGOVERN: I'll ask it again.</p> <p>20 HEARING OFFICER: Rephrase it. I</p> <p>21 think I understand, Mr. McGovern, what you're trying</p> <p>22 to get at.</p> <p>23 MR. MCGOVERN: Well, I'll just ask it</p> <p>24 very directly.</p> <p>25 HEARING OFFICER: I'm not sure what</p>	<p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. And prior to that time, you had no</p> <p>4 involvement with respect to either reviewing the</p> <p>5 application or any discussions with any</p> <p>6 representative of Magruder; is that correct?</p> <p>7 A. That's true.</p> <p>8 Q. Now, you indicated that one of the things</p> <p>9 that you routinely do is request information from</p> <p>10 other departments at the Department of Natural</p> <p>11 Resources to find out any histories of</p> <p>12 non-compliance; is that correct?</p> <p>13 A. Only if there's been a request for a hearing</p> <p>14 granted by the Commission would we go to that detail.</p> <p>15 Q. And, in fact, in this case that happened?</p> <p>16 A. Correct.</p> <p>17 Q. And so you made the request, correct?</p> <p>18 A. Yes.</p> <p>19 Q. I think that's been identified as RP No. 1;</p> <p>20 is that correct?</p> <p>21 HEARING OFFICER: Yes.</p> <p>22 A. Yes.</p> <p>23 Q. (By Mr. McGovern) And when you were asking</p> <p>24 for histories of non-compliance, are you asking for</p> <p>25 simply notices of violations or are you asking for</p>

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<p>1 any non-compliance that may be contained in each 2 department's records? 3 A. Generally speaking, it's focusing on notices 4 of violations. 5 Q. Were you aware of anything within the 6 regulation or statute that indicates that 7 non-compliance has to at least be a notice of 8 violation? 9 A. Without reviewing them, usually what we 10 would rely on is an issued notice of violation. I'm 11 not aware that -- there may be non-compliance issues 12 out there that may not have made it into this group. 13 Q. If you look at 444.773 and if you look 14 within Section 4 as well as within the regulations, 15 you're aware that what it refers to is histories of 16 non-compliance in the last five years, correct? 17 A. Pattern of non-compliance. 18 Q. Correct. It doesn't say patterns of notice 19 of violations or a greater violation, correct? 20 A. Correct. 21 Q. In fact, there are other provisions within 22 the regulations promulgated by the DNR that actually 23 talk about notice of violations, cease and desist 24 orders, abatement orders and things of that nature, 25 correct?</p>	<p>1 has found 25 instances of non-compliance. Did you 2 hear him say that? 3 A. It was approximately 25 percent, and I think 4 the number of inspections increased more than 100, 5 but I understand what you're saying. 6 Q. And from that, he issued one notice of 7 violation, correct? 8 A. Correct. 9 Q. And through some process, either the CCP or 10 some other means, he was able to reconcile that 11 non-compliance he observed; is that correct? 12 A. Through the one that got issued a notice of 13 violation or the other 24 percent? 14 Q. I'm saying the other 24. 15 A. Yeah. Exactly. And that's usually 16 something more administrative in nature or something 17 that can be rectified quickly and is not affecting 18 something off site, outside the permit boundary. 19 Q. That's your assumption as to what 20 Mr. Roberts did with respect to those 24; is that 21 correct? 22 A. That would be my assumption. 23 Q. But just so I understand, of those 25 24 instances of non-compliance -- let's assume it was 25 all at one location and only one notice of violation</p>
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<p>1 A. That's true. 2 Q. But the Department internally has simply 3 concluded that non-compliance must at least be a 4 notice of violation; is that right? 5 A. That's true. 6 Q. And do you know if that's written as a 7 policy of any type or in what manner the Department 8 came to the conclusion that non-compliance must at 9 least be a notice of violation? 10 A. Generally speaking, a notice of violation 11 would indicate something serious, such as, like, a 12 fish kill outside of the permit area or affecting 13 people outside of the permit area, and that's what 14 this somewhat -- that's what this law, piece of law, 15 somewhat refers to is that it can't be just, oh, they 16 forgot to put their name on the entrance sign. It 17 has to be something more significant than an 18 administrative detail. 19 Q. I understand that, but all it talks about is 20 a pattern of non-compliance; isn't that correct? 21 A. That's true. 22 Q. And, in fact, you've heard Mr. Roberts 23 testify that he has gone out and done some 150 24 inspections -- or at least I think in the deposition 25 it was 100, and during the course of those 100, he</p>	<p>1 was issued. From your perspective, that would 2 constitute just one violation for purposes of a 3 pattern of non-compliance; is that correct? 4 A. I do work with Mr. Roberts on a regular 5 basis whenever he comes back to me from being out in 6 the field. 7 HEARING OFFICER: You need to listen 8 to the question Counsel asks. 9 MR. MCGOVERN: I'll ask it again. 10 HEARING OFFICER: Restate the 11 question, listen to it and give a response. If your 12 Counsel wants you to elaborate on it, we'll do that 13 at a later time. 14 Q. (By Mr. McGovern) Here's the question, 15 Mr. Zeaman: I don't mean for it to be a tricky 16 question, just so you can make the distinction. In a 17 situation in which you walk out to a site, you 18 conduct the inspection and you see two instances of 19 non-compliance but for whatever reason decide not to 20 issue a notice of violation, as I understand your 21 testimony, you wouldn't count those in determining 22 whether or not there is a pattern of non-compliance; 23 is that correct? 24 A. That is true. 25 Q. You would only start counting if, in fact, a</p>

<p style="text-align: right;">Page 170</p> <p>1 notice of violation or something greater was issued; 2 is that correct? 3 A. That's correct. 4 Q. So if we were to review the records of 5 different inspection reports at Magruder and it notes 6 non-compliance that maybe even NOE's are issued but 7 never arise to a notice of violation, then you 8 wouldn't count those? 9 A. That's correct. 10 Q. Now, as I understand it, the purpose behind 11 the completeness review on the application is, one, 12 to ensure that all the necessary elements the DNR 13 requires are included in the application, correct? 14 A. That's true. 15 Q. The second is to ensure that once that 16 application is complete and public notice has been 17 provided, that anyone interested in reviewing that 18 application would have the full picture of what that 19 project is going to entail; is that correct? 20 A. Yes. 21 Q. And, in fact, if information was not 22 contained within that application, then a member of 23 the public or an interested party would not have a 24 full picture of what was going to be in that project, 25 correct?</p>	<p style="text-align: right;">Page 172</p> <p>1 included, then the application is defective and 2 incomplete, correct? 3 A. Correct. 4 Q. And just to clarify what Mr. Roberts 5 testified to, the publication that's included in the 6 paper just gives general information about the 7 project, correct? 8 A. It gives the location, how many acres, who's 9 mining it. There's -- I don't know exactly what 10 you're meaning by general information. 11 Q. That's it. I think you hit the -- you hit 12 the very points I was going to ask you. But in terms 13 of a member of the public who wants to get a more 14 detailed picture of this project, they would have to 15 submit a request to the DNR, a Sunshine request, to 16 review the documentation, correct? 17 A. That's true. 18 Q. And that information is readily available to 19 be reviewed if requested, correct? 20 A. True. 21 Q. Now, there were some questions asked by Mr. 22 Brownlee relative to the sewer lines, and some of 23 these earlier letters referenced the sewer lines. 24 Was there anything in the original application filed 25 by Magruder that would tell anybody where those sewer</p>
<p style="text-align: right;">Page 171</p> <p>1 A. That's true. 2 Q. And in this case you believe that the 3 inclusion of the sewer easement, as well as the 4 electric line easement, are significant components of 5 that application, correct? 6 A. They're required components, yes. 7 Q. In fact, they're significant from the 8 standpoint of providing information to the public as 9 to what this project entails; isn't that correct? 10 A. Could you rephrase that, please? 11 Q. Sure. It is also significant from the 12 public's perspective in determining whether or not 13 this project will have any impact on the public or a 14 particular person? 15 MR. BROWNLEE: That calls for 16 speculation as to what he's telling what the public's 17 perception is. I mean, he can answer for Land 18 Reclamation Program, but not for the public. 19 HEARING OFFICER: Sustained. 20 Q. (By Mr. McGovern) Is it a significant 21 component of the application from the Land 22 Reclamation standpoint to include the location of 23 utilities and easements? 24 A. It's a required component, yes. 25 Q. And, in fact, if the information is not</p>	<p style="text-align: right;">Page 173</p> <p>1 lines were actually located? 2 A. Not to the best of my knowledge. 3 Q. And unless you actually walked out to the 4 site, was there any way a member of the public or a 5 surrounding business could determine the location of 6 the Ameren lines? 7 A. There was an aerial photo that, in fact, 8 showed a mow -- big mow line right through the permit 9 area, but as far as it was not labeled. 10 Q. In fact, all you could see is what appears 11 to be a row that runs through there, correct? 12 A. I'd refer to it more as a mow line, but I 13 don't think road is quite accurate. 14 Q. I'm saying row. It looks like maybe for 15 purposes of maintenance there appears to be a worn 16 area that's shown on that map? 17 A. Correct. 18 Q. And from that, are you aware as to whether 19 or not Ameren uses that for purposes of gaining 20 access to its lines in the event it needs to conduct 21 any maintenance or repair? 22 A. I'm sorry. Could you say that again? 23 Q. The area that you observe, which is the worn 24 area underneath the Ameren line, do you know if 25 that's a maintenance access line, a road?</p>

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<p>1 A. I believe it's the power lines themselves, 2 and yeah, if there was a tree that fell on them, they 3 would have to go to that area through the easement to 4 repair the line. 5 Q. Now, were you the one that contacted 6 Magruder and said, you need to get additional 7 information submitted to ensure this application is 8 complete? 9 A. I did not inform Magruder. 10 Q. Did you initiate that action? 11 A. I did, in fact, initiate that action. 12 Q. Did you instruct Mr. Roberts to make that 13 call? 14 A. Correct. 15 Q. And did you do that based upon the fact that 16 you learned the application was incomplete? 17 MR. BROWNEE: You know, this has 18 been asked and answered about 40 times. 19 MR. MCGOVERN: I'm asking now. 20 MR. BROWNEE: He has testified to 21 this now about four or five times. 22 HEARING OFFICER: All right. I've 23 got the objection. Mr. McGovern, your response? 24 MR. MCGOVERN: Now I'm asking him in 25 terms of when he made the request and who he made it</p>	<p>1 further. 2 HEARING OFFICER: Mr. Mauer? 3 MR. MAUER: Thank you, your Honor. 4 EXAMINATION 5 QUESTIONS BY MR. MAUER: 6 Q. Mr. Zeaman, good to see you again. 7 A. Good to see you. 8 Q. Okay. I have a few questions. I'd like to 9 go back to what's been identified and I believe is in 10 front of you as MP-5, which is the original 11 application. It looks like a cover letter from Dean 12 McDonald to a Mr. Reid? 13 HEARING OFFICER: Okay. It's MP-5, 14 Mr. Mauer? 15 MR. MAUER: Yes. 16 HEARING OFFICER: Okay. I don't know 17 that the witness has got it. I'll get it. All 18 right. I'm handing MP-5 to the witness. Proceed. 19 Let me have these back so that we can keep them in 20 order. 21 A. MP-5. 22 Q. (By Mr. Mauer) Okay. And I want to ask you 23 about the map, the detail map that we've been talking 24 about, if you can turn to that for me. 25 A. (Complies.)</p>
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<p>1 to to see if there were any discussions between this 2 witness and any representatives of Magruder. I'm 3 just simply asking him the question did he initiate 4 the action, he said yes. I asked him did he make the 5 call or did he instruct somebody else. He indicated 6 he instructed Mr. Roberts to make the call. 7 HEARING OFFICER: So you're now 8 asking this witness if he had further conversation 9 with -- 10 MR. BROWNEE: No. He didn't answer 11 that question. That's when the objection came. So 12 I'm asking him did you instruct Mr. Roberts to 13 contact Magruder to ask them to supplement the 14 application. 15 HEARING OFFICER: I thought he just 16 testified that he did, but the objection is 17 overruled, we'll continue to plow this field. 18 Proceed. Answer the question. 19 A. Please? 20 Q. (By Mr. McGovern) Certainly. All I'm 21 asking is, did you instruct Mr. Roberts to contact 22 Magruder to request that they supplement their 23 application? 24 A. Correct. Yes, I did. 25 MR. MCGOVERN: I have nothing</p>	<p>1 Q. All right. This map, this is the one that 2 came in and this is the one that you've identified as 3 not having the sewer treatment lines on it; is that 4 right? 5 A. That's correct. 6 Q. All right. And then you subsequently 7 learned that there were -- the sewer lines were 8 there, and you learned that about those lines as a 9 result of the public comment; is that right? 10 A. That's true. 11 Q. All right. Now, the Ameren line, the 12 electric line, I think you said there was, like, a 13 photograph or something. Is this the map and does it 14 show the strip that runs horizontally through the 15 property? Is that the strip that you were talking 16 about? 17 A. It's a horizontal line that runs through the 18 southern portion of the property down -- it starts in 19 at the... There's a western edge boundary where it 20 comes in at and exits about right through the 21 southeast corner. 22 Q. Perfect. My question is, there's nothing on 23 this map that identifies that strip as being an 24 Ameren line or a utility line or anything, true? 25 A. That's true.</p>

<p style="text-align: right;">Page 178</p> <p>1 Q. And did I understand your testimony that it 2 wasn't until the site visit in January of 2008, that 3 was the first time that you realized and learned 4 that, in fact, there were utility lines that impacted 5 this proposed quarry site? 6 A. The utilities, yes. Not the sewer easement, 7 though. 8 Q. So you knew about the sewer easement because 9 the City of Osage Beach or someone found out about it 10 and wrote you a letter and said, hey, wait a minute, 11 there are sewer lines there, right? 12 A. That's true. 13 Q. But you didn't know about the Ameren line 14 because no one from Ameren or some other electric 15 user wrote you a letter and said, hey, wait a minute, 16 your map is missing an electric line that is also 17 impacted by this property? 18 A. That's correct. 19 Q. All right. But you thought that the absence 20 of the labeling of the utility line on this map was 21 significant enough that you directed Mr. Roberts to 22 go have that -- have Magruder provide you a corrected 23 map that showed both the sewer lines and the utility 24 line? 25 A. That's true.</p>	<p style="text-align: right;">Page 180</p> <p>1 Mauer. 2 MR. MAUER: Yes. 3 HEARING OFFICER: Are you under the 4 impression I didn't listen to Mr. Roberts' testimony? 5 MR. MAUER: No, sir. 6 HEARING OFFICER: Are you under the 7 impression that the court reporter did not record it? 8 MR. MAUER: No, sir. 9 HEARING OFFICER: Why are we going 10 over this information again? What new information do 11 you -- wait. Have you deposed this witness? 12 MR. MAUER: Yes, I have. 13 HEARING OFFICER: So what new 14 information do you propose we're going to gain on 15 your line of questioning that hasn't already been 16 laid in my record? 17 MR. MAUER: I'm trying to make my 18 record. I understand your ruling, sir. I'm trying 19 to make my record, and I think this was not something 20 that I was aware of when I deposed this gentleman, so 21 I did not ask him about this in the deposition, so I 22 don't know his answer to this question. 23 HEARING OFFICER: And what -- what if 24 he answers that he's got the lease? Do you think 25 he's going to answer that?</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. And those are important components for the 2 application process; isn't that true? 3 A. They're required components. 4 Q. And they're important, aren't they? 5 A. They're important and required, yes. 6 Q. Okay. The site information sheet, which is 7 also in MP-5? 8 A. Site information form? 9 Q. Yes. 10 A. Yeah. 11 Q. Do you have that there? 12 A. Yes, I do. 13 Q. If you look at the bottom, it says -- the 14 box on Source of Right to Mine, do you see that? 15 A. Yes. Yes. Down at the bottom? 16 Q. Yes. 17 A. There's two places where it says "Source of 18 Right to Mine," in the middle box and also in the 19 bottom box. 20 Q. Yes. And they're both checked Lease; is 21 that right? 22 A. Yes. 23 Q. And on the bottom one under Magruder 24 Limestone, it says -- 25 HEARING OFFICER: Excuse me, Mr.</p>	<p style="text-align: right;">Page 181</p> <p>1 MR. MAUER: No, sir. 2 HEARING OFFICER: Mr. Mauer, really, 3 I'm trying to understand where you're going with the 4 line of questioning that isn't simply going over 5 exactly what we went over this morning. 6 MR. MAUER: I think this witness 7 may -- do you want me to just -- if I would make an 8 offer of proof, my offer of proof would be that I 9 think this witness would testify that he had no idea 10 from reading this note that there was not an actual 11 existing lease in place, and I wanted to ask him if, 12 in fact, he knows that there's not an actual lease in 13 place whether or not he deemed that to be a complete 14 application. That's what I was going to ask him. 15 And if you want that as an offer of proof, I will do 16 it, because I think he will say it's not. 17 HEARING OFFICER: Go ahead and 18 restate it. It's as redundant as can be, but go 19 ahead and restate it and make your record. 20 Q. (By Mr. Mauer) Mr. Zeaman, if you look at 21 the site information sheet, do you see that? 22 A. Yes. 23 Q. At the bottom, could you read the note where 24 it's checked by the box Lease right across from the 25 date of 5/1/07?</p>

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<p>1 A. "We are" -- in parentheses?</p> <p>2 Q. Yes.</p> <p>3 A. "We are leasing from Eolia," if that's the</p> <p>4 correct pronunciation, "Development."</p> <p>5 Q. Okay. Prior to today, did you ever know</p> <p>6 that there's actually not a written lease in place</p> <p>7 for this property?</p> <p>8 A. I was not aware.</p> <p>9 Q. Do you understand that there is a</p> <p>10 requirement that there actually be proof of the right</p> <p>11 to mine property as part of an application?</p> <p>12 A. The Applicant has to have the right to mine</p> <p>13 a piece of property.</p> <p>14 Q. All right. And do they have to have that</p> <p>15 right to mine the piece of property before they can</p> <p>16 receive a permit?</p> <p>17 A. I've never thought about it that way. I'm</p> <p>18 sure that the operator -- or if somebody just started</p> <p>19 showing up on somebody's land just to mine it and the</p> <p>20 owner of that land had a lot of issues with it they</p> <p>21 would write in to us and say whether there was a</p> <p>22 lease agreement or not.</p> <p>23 Q. Is it important to the Land Rec Program that</p> <p>24 there be some sort of contractual relationship or</p> <p>25 other demonstrated right between the owner of the</p>	<p>1 Q. Applicant's 6 is the additional amendment,</p> <p>2 yes.</p> <p>3 A. Okay. Yes.</p> <p>4 Q. Would you agree that those documents</p> <p>5 constitute the entire permit application from</p> <p>6 Magruder to Land Rec Program?</p> <p>7 A. From what we require, yes.</p> <p>8 Q. All right. So anything -- that's what</p> <p>9 you're going to look at when you decide whether or</p> <p>10 not this permit should be granted?</p> <p>11 A. Correct.</p> <p>12 Q. All right. I want to talk to you, then,</p> <p>13 about the permit. If the permit is granted, Magruder</p> <p>14 will be able to, according to the map they've</p> <p>15 submitted now, mine on approximately 100 acres of</p> <p>16 land; is that right?</p> <p>17 A. There's a detailed -- or that's what the</p> <p>18 bonded area is. They have the right if it were</p> <p>19 issued today for the 205 acres, they could mine</p> <p>20 essentially within that 205-acre boundary.</p> <p>21 Q. All they have to do if they want to go onto</p> <p>22 other areas is post another bond?</p> <p>23 A. As long as it's within that 205-acre area</p> <p>24 identified on the detail map.</p> <p>25 Q. And if you have the colored map -- and if</p>
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<p>1 land and the operator?</p> <p>2 A. There should be some type of agreement and</p> <p>3 lease, yes.</p> <p>4 Q. And that is important to your permit</p> <p>5 process?</p> <p>6 A. Yes, it is.</p> <p>7 Q. So would you want to know at the time before</p> <p>8 the permit is issued that, in fact, there is a</p> <p>9 contract in place so that there is a relationship --</p> <p>10 an established legal relationship between the owner</p> <p>11 of the land and the operator?</p> <p>12 A. Alls we have to know is that, in fact, there</p> <p>13 is some type of a lease agreement.</p> <p>14 Q. Okay. And you'd want to know that before</p> <p>15 you issued the permit?</p> <p>16 A. Yes.</p> <p>17 Q. Thank you. You were here when Mr. Roberts</p> <p>18 testified, and I want to ask you about MP-5.</p> <p>19 Mr. Roberts told us that MP-5, along with the site</p> <p>20 information plan, along with the supplement which was</p> <p>21 Applicant's 6 and the additional map, was all that</p> <p>22 the Land Rec Program considered to be the application</p> <p>23 permit of Magruder. Do you remember that testimony?</p> <p>24 A. Was MP-6 part of the additional amendment in</p> <p>25 February of '08?</p>	<p>1 not, I'll show it to you -- that we've just been</p> <p>2 provided, do you see where the sewer treatment plant</p> <p>3 and the sewage line are located on that map, where</p> <p>4 the sewer lines are located?</p> <p>5 A. I see the Ameren UE power line, and I also</p> <p>6 see Lake Ozark/Osage Beach sewer. Yes. Yes, I do.</p> <p>7 Q. Would you agree with me that by looking at</p> <p>8 the bonded property that Magruder has included the</p> <p>9 very property covered by the sewage treatment lines?</p> <p>10 A. I believe -- could you repeat that, please,</p> <p>11 again?</p> <p>12 Q. Yes, sir. The bonded area that they've</p> <p>13 provided to the Land Rec Program now clearly covers</p> <p>14 100 acres which includes the area where the sewage</p> <p>15 treatment lines are located?</p> <p>16 A. Within the property, yes.</p> <p>17 Q. Okay. And so is there anything in their</p> <p>18 permit that would prohibit them from mining right up</p> <p>19 to or adjacent to the sewage treatment easement?</p> <p>20 A. No, there would be nothing -- there's</p> <p>21 nothing, no requirement -- they could mine through</p> <p>22 it, essentially.</p> <p>23 Q. And they could also mine as deep as they</p> <p>24 want; isn't that true?</p> <p>25 A. That's true.</p>

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<p>1 Q. Pursuant to the permit?</p> <p>2 A. That's correct.</p> <p>3 Q. So if this permit is granted, they could</p> <p>4 come in and quarry as deep as they wanted and right</p> <p>5 up to those sewage treatment lines or through them?</p> <p>6 A. As far as the permit -- Land Reclamation</p> <p>7 permit is concerned, yes.</p> <p>8 Q. I want to talk to you about BP-3, which is</p> <p>9 your letter, please.</p> <p>10 A. BP-3?</p> <p>11 Q. Yes, sir. And this is the document dated</p> <p>12 July 13th, 2007, that you first drafted for Mr. Coen;</p> <p>13 is that right?</p> <p>14 A. Correct.</p> <p>15 Q. I want to ask you about some of the things</p> <p>16 that you wrote. In the first paragraph under Staff</p> <p>17 Director's Notice of Recommendation, the last</p> <p>18 sentence says, "My recommendation for approving this</p> <p>19 expansion application is based on the fact that the</p> <p>20 company has satisfied the requirements for</p> <p>21 application completeness;" is that right?</p> <p>22 A. That's what it says, yes.</p> <p>23 Q. When you draft -- did you draft that</p> <p>24 sentence?</p> <p>25 A. I drafted that.</p>	<p>1 Missouri Department of Natural Resources does provide</p> <p>2 protection concerning sediment run-off in the creek</p> <p>3 system, air pollution or excessive dust emissions</p> <p>4 that originate from within the property of the</p> <p>5 proposed mine site." Did I read that correctly?</p> <p>6 A. Correct.</p> <p>7 Q. So those were the three things that the</p> <p>8 Department of Natural Resources does try to protect,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. All right. So -- and then your next</p> <p>12 sentence goes on to say you don't provide protection</p> <p>13 for the sewage treatment plant, for the easement or</p> <p>14 for the blasting or the things that might adversely</p> <p>15 impact the sewage treatment lines; is that right?</p> <p>16 A. That's true.</p> <p>17 Q. So basically, if I understand your summary</p> <p>18 comments, once this permit is granted, the Land Rec</p> <p>19 Program and the DNR are not going to be able to do</p> <p>20 anything to protect those sewage treatment lines or</p> <p>21 the sewage treatment plant; is that true?</p> <p>22 A. That's true.</p> <p>23 Q. So if the permit is granted, then the sewage</p> <p>24 treatment plant and the Joint -- the Cities of Osage</p> <p>25 Beach and Lake Ozark are pretty much on their own to</p>
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<p>1 Q. So was it your intent to be expressing that</p> <p>2 the Director is recommending approval because the</p> <p>3 requirements for a complete application have been</p> <p>4 fulfilled?</p> <p>5 A. That's correct.</p> <p>6 Q. Yet that sentence doesn't say anything about</p> <p>7 and there's no danger to the sewer lines or there's</p> <p>8 no danger to the sewage treatment plant. Were you</p> <p>9 attempting to make a determination that there is no</p> <p>10 danger to the sewage line by this quarry permit?</p> <p>11 A. By no means.</p> <p>12 Q. That was not part of your recommendation; is</p> <p>13 that true?</p> <p>14 A. That's correct. It's based on the</p> <p>15 application completeness.</p> <p>16 Q. All right. And, in fact, now we know that</p> <p>17 the application was not complete when you wrote that</p> <p>18 sentence, right?</p> <p>19 A. That's true.</p> <p>20 Q. All right. Could you turn to Page 2 of</p> <p>21 BP-3?</p> <p>22 A. (Complies.)</p> <p>23 Q. Under the Summary Comments, I have a few</p> <p>24 questions about that. Your summary comments noted a</p> <p>25 variety of concerns, and it goes on to say, "The</p>	<p>1 do whatever they can to protect those lines because</p> <p>2 the DNR is not going to be able to help them?</p> <p>3 A. Generally, I would say yes.</p> <p>4 Q. Okay. That sentence goes on -- the last</p> <p>5 sentence says, "Regarding blasting, note that House</p> <p>6 Bill 298 this year did enact legislation to regulate</p> <p>7 blasting." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Are you familiar with that bill that became</p> <p>10 the law?</p> <p>11 A. Just a little bit.</p> <p>12 Q. Are you familiar with it enough to know if</p> <p>13 there are licensing requirements for blasters?</p> <p>14 A. Yes, sir, there is licensing requirements.</p> <p>15 Q. Are you aware of any requirements on how the</p> <p>16 actual operations of blasting, the type of load that</p> <p>17 can be used or the proximity to sewage treatment</p> <p>18 lines or a sewage treatment plant or other</p> <p>19 structures, is that included in that bill?</p> <p>20 A. I have not reviewed that bill enough to say</p> <p>21 whether it is or is not.</p> <p>22 Q. So by putting that sentence in your summary</p> <p>23 of comments, you weren't attempting to show that</p> <p>24 there's new legislation that passed that's going to</p> <p>25 take care of the sewage treatment plant or sewage</p>

<p style="text-align: right;">Page 190</p> <p>1 treatment lines, true?</p> <p>2 A. Can you say that again?</p> <p>3 Q. This note about this new bill regarding</p> <p>4 blasting, you weren't attempting to say that there's</p> <p>5 no concern about blasting near the sewage treatment</p> <p>6 plant or sewage treatment lines because of this new</p> <p>7 bill, are you?</p> <p>8 A. The bill hadn't even gone into effect at</p> <p>9 that point. I really didn't even know whether or not</p> <p>10 it was going to go into effect.</p> <p>11 Q. I want to go to the next page, Attachment 1,</p> <p>12 and this is your response to the comments that were</p> <p>13 raised in the letters that we looked at in BP-2; is</p> <p>14 that right?</p> <p>15 A. Correct. Yes.</p> <p>16 Q. All right. And I just want to ask first,</p> <p>17 you did receive a significant number of letters</p> <p>18 concerning the method by which Magruder had provided</p> <p>19 notice of their application, true?</p> <p>20 A. We received -- I'm sorry. Could you say</p> <p>21 that again?</p> <p>22 Q. The letters that you received, many of them</p> <p>23 expressed complaints or concerns about how Magruder</p> <p>24 had provided notice to the public?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 192</p> <p>1 A. Yes.</p> <p>2 Q. But it wasn't the one that could have been</p> <p>3 used to actually provide notice in the area --</p> <p>4 MR. BROWNLEE: I'm going to object to</p> <p>5 that. If it's legal, your Honor, that's what the law</p> <p>6 is.</p> <p>7 HEARING OFFICER: Sustained.</p> <p>8 MR. BROWNLEE: If they don't like</p> <p>9 this, they should go to the legislation and change</p> <p>10 the law.</p> <p>11 HEARING OFFICER: I've already</p> <p>12 sustained your objection.</p> <p>13 Q. (By Mr. Mauer) Did you come to find out</p> <p>14 that there was a newspaper that would have</p> <p>15 qualified --</p> <p>16 MR. BROWNLEE: I'm going to object</p> <p>17 again.</p> <p>18 HEARING OFFICER: Mr. Mauer, the</p> <p>19 notice is legal. You know it's legal, I know it's</p> <p>20 legal, everybody else knows it's legal.</p> <p>21 MR. MAUER: I'm not challenging the</p> <p>22 legality of the notice, sir.</p> <p>23 HEARING OFFICER: Then there is no</p> <p>24 relevance to the fact that it could have been</p> <p>25 published somewhere else. There is simply no</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. And, in fact, in this case we've already</p> <p>2 established Magruder drew a 50-foot line inside their</p> <p>3 property boundary for their mine plan area, right?</p> <p>4 A. That's true.</p> <p>5 Q. And as a result of how that mine plan area</p> <p>6 was established, they didn't have to provide written</p> <p>7 notice to any of the abutting land owners?</p> <p>8 A. That's correct.</p> <p>9 Q. And so by drawing their mine plan area the</p> <p>10 way they did, the consequence of that was they didn't</p> <p>11 have to mail out letters to tell the neighbors about</p> <p>12 a potential quarry site?</p> <p>13 A. That's true.</p> <p>14 Q. And they provided -- they published notice</p> <p>15 in a newspaper in Miller County but one that at least</p> <p>16 the complaint letters said is a long way away from</p> <p>17 the quarry site and nobody gets -- nobody gets that</p> <p>18 paper in and around the area. Do you remember those</p> <p>19 complaints?</p> <p>20 A. Yes.</p> <p>21 Q. All right. Now, I understand it's your</p> <p>22 position it still qualified, right?</p> <p>23 A. I'm sorry. It's qualifying?</p> <p>24 Q. The publication still satisfied the notice</p> <p>25 requirements?</p>	<p style="text-align: right;">Page 193</p> <p>1 relevance to that, and I am so ruling.</p> <p>2 MR. MAUER: I'll attempt to</p> <p>3 establish. I'll move on.</p> <p>4 HEARING OFFICER: Please.</p> <p>5 Q. (By Mr. Mauer) Magruder had an opportunity</p> <p>6 for a public hearing, right? They could have met</p> <p>7 with the public at an informal public meeting?</p> <p>8 A. A public meeting, yes.</p> <p>9 Q. And they declined that?</p> <p>10 A. They did.</p> <p>11 Q. All right. So is there -- Magruder didn't</p> <p>12 provide notice to the neighbors. They published as</p> <p>13 they did. They didn't have the public meeting. Is</p> <p>14 there anything else that Magruder could have done --</p> <p>15 is there any less that they could have done to</p> <p>16 provide notice or to meet with the concerns of the</p> <p>17 public than what they did?</p> <p>18 MR. BROWNLEE: Again, that's just</p> <p>19 totally irrelevant. He's outlined everything we've</p> <p>20 done was legal, but he wants to challenge it, and</p> <p>21 it's totally irrelevant to this permit hearing.</p> <p>22 HEARING OFFICER: Mr. Mauer --</p> <p>23 MR. MAUER: Can I explain?</p> <p>24 HEARING OFFICER: Please do.</p> <p>25 MR. MAUER: I'm attempting to show</p>

<p style="text-align: right;">Page 194</p> <p>1 that later on it says that Magruder is going to be a 2 good neighbor, that Magruder can be trusted to do the 3 right thing. 4 HEARING OFFICER: Let me address that 5 right now. It's irrelevant that Magruder said 6 they're going to be a good neighbor. I don't find 7 anywhere in the rule and regulation. And I defer to 8 you, if you found a rule or regulation that says that 9 the Commission must grant this application because 10 they find the Applicant is a good neighbor or they 11 must deny it because they find that the Applicant is 12 not a good neighbor, I certainly will entertain 13 evidence on that. I can't find it in the 14 regulations, Mr. Mauer. 15 MR. MAUER: Okay. 16 Q. (By Mr. Mauer) Turn to the next page where 17 it says, "Sewer Plant Easement." 18 A. Yes. 19 Q. All right. The concern that's expressed, 20 would you agree that the concern that is expressed at 21 least in part that should the lines be damaged that 22 there could be a catastrophic impact? That's what 23 you wrote, right? 24 A. That's what the concern was that people 25 wrote in.</p>	<p style="text-align: right;">Page 196</p> <p>1 A. I did contact Dean McDonald and asked him, 2 what is your position on the -- on the sewer -- on 3 the forced sewer mains, and he said, well, I'll tell 4 you right now we won't change the grade on them and 5 we're not planning on blasting through them. 6 Q. But that's not written down anywhere in 7 their application, is it? 8 A. That's true. 9 Q. And, in fact, there's nothing -- as we've 10 previously established, there's nothing to bind 11 Magruder to that intent; isn't that true? 12 A. That's true. 13 Q. So if they change their mind and decide 14 we're going to quarry right up to those sewer lines 15 or we're going to quarry underneath them or we're 16 going to quarry through them, if the permit is 17 granted, there's nothing to stop them from doing 18 that? 19 A. That's correct. 20 Q. The next several pages talk about other 21 concerns, and is it fair to say, sir, that in your 22 responses you address what can and can't be done but 23 in general one of your recommendations is that, well, 24 you can always sue them, there's always civil action? 25 A. Yes.</p>
<p style="text-align: right;">Page 195</p> <p>1 Q. And one of the concerns was that they could 2 be damaged by blasting, right? 3 A. Yes. 4 Q. All right. Now, your response doesn't 5 really address how the lines could be protected from 6 blasting; isn't that true? 7 A. That's true. 8 Q. In fact, the Land Reclamation Commission 9 doesn't control blasting, right? 10 A. That's why there was no type of response. 11 Q. So for the purposes of your recommendation, 12 you didn't address at all the potential damage or 13 danger to the sewage treatment lines from blasting? 14 A. That's correct. 15 Q. The next page at the very top, the third 16 line down at the very end says, "We encourage 17 Magruder Limestone Company to prevent any possible 18 economic or environmental damage associated with the 19 forced mains or easement. We are aware that Magruder 20 Limestone does not have any plans to mine through the 21 easement and there will be no great alteration." Do 22 you see that? 23 A. Yes, I do. 24 Q. And that was something that, what, Magruder 25 told you?</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. Would you agree with me, Mr. Zeaman, that if 2 a line breaks and we have sewage spilling out onto 3 the ground that a civil lawsuit subsequently isn't 4 going to take care of that problem? 5 A. I would agree with that. Not the 6 environmental portion of it. 7 Q. Do you have any information that Magruder 8 has named the City or the Joint Sewer Board as an 9 additional insured? 10 A. I don't have any such information. 11 Q. And you don't require any sort of insurance 12 to protect the lines in the event that they might be 13 damaged, right? 14 A. That's true. 15 Q. Are you aware of any of the history of 16 either one of the sewage treatment lines for breakage 17 or damage? 18 A. No. 19 Q. Did you make any inquiry from the sewer 20 treatment plant operator or the City's -- either 21 City's public works director about problems, any 22 problems experienced with the sewage treatment lines? 23 A. I don't recall if I did. I don't believe I 24 did. 25 Q. If you could turn to the page that says,</p>

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<p>1 "Residential Area"?</p> <p>2 MR. MAUER: And, Mr. Tichenor, I</p> <p>3 don't mean to draw the ire of the hearing officer.</p> <p>4 HEARING OFFICER: Well, you are</p> <p>5 drawing my ire on some of it, Mr. Mauer.</p> <p>6 MR. MAUER: I want to make sure that</p> <p>7 there's something there.</p> <p>8 HEARING OFFICER: I understand.</p> <p>9 THE WITNESS: It's three pages from</p> <p>10 the back.</p> <p>11 MR. MAUER: Yes. Thank you.</p> <p>12 Q. (By Mr. Mauer) There is the concern about</p> <p>13 there being the homes on Wood River Road, and then</p> <p>14 you write your response, right?</p> <p>15 A. That's correct.</p> <p>16 Q. All right. The seventh line down at the</p> <p>17 very end says, "We believe that Magruder Limestone</p> <p>18 Company is concerned about being a good neighbor."</p> <p>19 Do you see that? All I want to ask is, what</p> <p>20 significance was that to you that you put it in the</p> <p>21 report?</p> <p>22 A. Generally speaking, I probably -- I probably</p> <p>23 contacted Dean and asked him, you know, what are you</p> <p>24 going to do to help these folks out, and they said,</p> <p>25 well, we may be a good neighbor. I believe he</p>	<p>1 you still? It's the Missouri statute.</p> <p>2 HEARING OFFICER: No, but I've got</p> <p>3 it. I'm trying to keep our exhibits straight.</p> <p>4 Q. (By Mr. Mauer) Do you have it there, sir?</p> <p>5 A. Yes, I have the revised statutes.</p> <p>6 Q. Okay. Thank you. When you wrote BP-3, the</p> <p>7 July 17th, 2007, memorandum, you were acting on</p> <p>8 information that you believed the application was</p> <p>9 complete, right?</p> <p>10 A. Correct.</p> <p>11 Q. And if I understand your testimony, you</p> <p>12 subsequently found out that it wasn't complete,</p> <p>13 right?</p> <p>14 A. That's correct.</p> <p>15 Q. Do you now believe that the information</p> <p>16 you've received that we've compiled together, you've</p> <p>17 told me about, do you now believe the application is</p> <p>18 complete?</p> <p>19 A. I do believe that, yes.</p> <p>20 Q. And have you communicated that information</p> <p>21 to Mr. Coen?</p> <p>22 A. There's been -- we've talked back and forth,</p> <p>23 and we believe -- I don't know of a direct</p> <p>24 communication moment when that happened. I believe</p> <p>25 that everything is complete, whether or not I asked</p>
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<p>1 said -- mentioned something about wanting to pave the</p> <p>2 road and things of that nature. That's the relevancy</p> <p>3 of that.</p> <p>4 Q. Did you expect him to say that we were going</p> <p>5 to be a bad neighbor?</p> <p>6 A. I don't believe so.</p> <p>7 Q. Let me ask you about paving the road. Is</p> <p>8 there anything in the application that requires</p> <p>9 Magruder to pave the road?</p> <p>10 A. No.</p> <p>11 Q. So if they choose to do so or not to do so,</p> <p>12 there's nothing that the Land Rec Commission can do</p> <p>13 to enforce it, true?</p> <p>14 A. That's correct.</p> <p>15 Q. I want to ask you about a question I asked</p> <p>16 Mr. Roberts. Did you ever tell anyone at Magruder</p> <p>17 Limestone Company that the detailed map for their</p> <p>18 application did not need to include the location of</p> <p>19 easements?</p> <p>20 A. I don't believe I did.</p> <p>21 Q. Are you aware of anybody under your</p> <p>22 supervision that ever had such a conversation with a</p> <p>23 representative from Magruder Limestone Company?</p> <p>24 A. I'm not aware of it if it happened.</p> <p>25 Q. Do you have Applicant's 3 there in front of</p>	<p>1 and formally told him or not.</p> <p>2 Q. Okay. Please turn to -- in Applicant 3, the</p> <p>3 ninth page of Applicant's 3 there should be a</p> <p>4 Paragraph Number 10 at the bottom. Did I miscount?</p> <p>5 A. 777.3. I may have miscounted.</p> <p>6 MR. BROWNLEE: Can you give us the</p> <p>7 cite of the statute, please.</p> <p>8 MR. MAUER: It is 444.772.10.</p> <p>9 A. "At the time the permit application," is</p> <p>10 that --</p> <p>11 Q. (By Mr. Mauer) Yeah, that's it. All right.</p> <p>12 In Paragraph 10 it says, "At the time that a permit</p> <p>13 application is deemed to be complete by the Director,</p> <p>14 the operator shall publish a notice of intent to</p> <p>15 operate a surface mine in a newspaper qualified</p> <p>16 pursuant to Section 493.050 to publish legal notices</p> <p>17 in the county where the land is located." Do you see</p> <p>18 where I read that?</p> <p>19 A. Did I what?</p> <p>20 Q. Did you see where I read that?</p> <p>21 A. Yes. Exactly.</p> <p>22 Q. All right. My question is that the</p> <p>23 application was deemed complete by you now after the</p> <p>24 February 2008 information was submitted, correct?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 202</p> <p>1 Q. Has Magruder published the notice of intent 2 to operate a surface mine after the February 2008 3 information was received? 4 A. No. 5 Q. Are you aware of anything in the regulations 6 or the statutes that allows an application to be 7 supplemented or changed after the publication has 8 already been done? 9 A. I would say no. 10 Q. You told me about your one conversation with 11 Mr. McDonald about protecting the lines. Do you 12 remember that? 13 A. Yes. 14 Q. Have you had subsequent -- received anything 15 subsequent from Magruder about anything they intend 16 to do to protect the sewage treatment lines? 17 A. Am I aware of other information? 18 Q. I mean, is there anything that they've 19 submitted to the Land Rec Program that you consider 20 to be binding and enforceable to protect the sewage 21 treatment lines? 22 A. No. 23 Q. Thank you. 24 MR. MAUER: Nothing further. 25 HEARING OFFICER: Thank you,</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. Mr. Zeaman, let me ask you about this 2 mapping issue that's been discussed with all of the 3 witnesses. If Magruder would have included on the 4 original map with the first application the Ameren 5 utility easement and the sewer line easement, would 6 any of that have gone out in public notice? 7 A. It would not have been included in a public 8 notice. 9 Q. There's no maps sent out in public notice, 10 are there? 11 A. Correct. 12 Q. So if a person wanted to know about that and 13 had they been there, they would have had to have done 14 a Sunshine request or come up to DNR just like you've 15 been questioned about, correct? 16 A. That's true. 17 Q. So that information being on the original 18 notice wouldn't have done a thing -- I mean being on 19 the original application wouldn't have done a thing 20 to inform the public in terms of public notice, 21 correct? 22 A. That's true. 23 Q. Okay. Now, turning to this requirement for 24 the easement being a required component -- and that's 25 under the regulation, isn't it?</p>
<p style="text-align: right;">Page 203</p> <p>1 Mr. Mauer. 2 EXAMINATION 3 QUESTIONS BY HEARING OFFICER: 4 Q. Have you reviewed the sewer line easement? 5 Have you read it? 6 A. I've reviewed the sewer line easement as far 7 as the -- 8 Q. I mean the easement. 9 A. No. 10 Q. Are you an attorney? 11 A. No. 12 HEARING OFFICER: Redirect? 13 MR. DUGGAN: None. 14 HEARING OFFICER: All right. Thank 15 you for your testimony. Oh, I'm sorry. 16 MR. MCGOVERN: I'm going to have -- 17 MR. BROWNLEE: Yeah, I do, too. 18 HEARING OFFICER: I thought I could 19 slip one by you. 20 MR. MCGOVERN: I promise you I only 21 have a few, depending on Mr. Brownlee. 22 HEARING OFFICER: Mr. McGovern, 23 that's Mr. Mauer's stock and trade line. 24 EXAMINATION 25 QUESTIONS BY MR. BROWNLEE:</p>	<p style="text-align: right;">Page 205</p> <p>1 A. That's true. 2 Q. And that's Section... I can't remember 3 the -- it's Applicant's 2. 4 MR. MCGOVERN: Page 4. 5 Q. (By Mr. Brownlee) Applicant's 2, Page 4. 6 HEARING OFFICER: Let me get a clean 7 copy, because I have that marked up. Okay. The 8 witness has been given Applicant's 2. 9 Q. (By Mr. Brownlee) And we're under Section 10 (E). 11 A. I'm sorry? 12 Q. (E) on Page 4. It talks about the maps. 13 Are you there? 14 A. Yes. 15 Q. Now, you're not an attorney, but do you see 16 the word -- do you know what the word easement means? 17 A. Generally speaking, an easement is some type 18 of a parcel of land that's not owned but somebody 19 else has a right to utilize that piece to, like, as 20 in driving or in some cases a utility easement. 21 Q. Well done. I agree. Do you see anywhere in 22 that regulation that that word -- that common word 23 easement is mentioned as being required? 24 MR. MCGOVERN: Objection. Best 25 evidence. Legal conclusion.</p>

52 (Pages 202 to 205)

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<p>1 HEARING OFFICER: What do you mean</p> <p>2 the best evidence?</p> <p>3 MR. MCGOVERN: Best evidence. He's</p> <p>4 asking him what the regulation states.</p> <p>5 HEARING OFFICER: Mr. McGovern, we've</p> <p>6 been having this witness read from the regulation all</p> <p>7 day. The regulation is in evidence. The Hearing</p> <p>8 Officer is taking official notice of it. Overruled.</p> <p>9 Q. (By Mr. Brownlee) Is the word easement</p> <p>10 mentioned?</p> <p>11 A. I have just reviewed it twice, and I want to</p> <p>12 look over it one more time. I'm having difficulty in</p> <p>13 locating that, and I always thought that it was in</p> <p>14 there. That's why I need to go over it one more</p> <p>15 time, please.</p> <p>16 HEARING OFFICER: I'll tell you,</p> <p>17 let's take about a ten-minute recess. I think we</p> <p>18 would be well-served by that to allow the witness to</p> <p>19 read it over, and we're off the record.</p> <p>20 (Brief recess.)</p> <p>21 HEARING OFFICER: We're back on the</p> <p>22 record. Mr. Brownlee, you are recognized to resume</p> <p>23 your redirect of the witness.</p> <p>24 Q. (By Mr. Brownlee) I've asked you, I</p> <p>25 believe, in that regulation specifically dealing with</p>	<p>1 telephone call.</p> <p>2 Q. And if you'll make reference again to the</p> <p>3 statutes, and in particular -- it's Applicant's</p> <p>4 Exhibit 3, and I'm looking at 444.773, towards the</p> <p>5 end. It's in Paragraph or Section 4.</p> <p>6 MR. BROWNLEE: And if I could just</p> <p>7 approach the witness, it might make it a little</p> <p>8 easier rather than me trying to...</p> <p>9 HEARING OFFICER: Proceed.</p> <p>10 Q. (By Mr. Brownlee) The statute, would you</p> <p>11 read that in out of the statute?</p> <p>12 A. "Such past acts of non-compliance in</p> <p>13 Missouri in and of themselves are an insufficient</p> <p>14 basis to suggest a reasonable likelihood of future</p> <p>15 acts of non-compliance."</p> <p>16 Q. Okay. In addition, continuing on in that</p> <p>17 section, could you read the underlined?</p> <p>18 A. We're skipping a lot, but yes. "In</p> <p>19 addition, such basis must be developed by multiple</p> <p>20 non-compliance of any environmental law administered</p> <p>21 by the Missouri Department of Natural Resources at</p> <p>22 any single facility in Missouri that resulted in harm</p> <p>23 to the environment or impaired the health, safety or</p> <p>24 livelihood of persons outside of the facility."</p> <p>25 Q. So if someone just called in a complaint, it</p>
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<p>1 the maps, do you see the word easement?</p> <p>2 A. It doesn't specifically state easements.</p> <p>3 Q. Okay. And if the Department wanted to use</p> <p>4 the word easement, they know about easements, don't</p> <p>5 they, and could have used the word easement?</p> <p>6 MR. MAUER: Objection. Calls for</p> <p>7 speculation as to what the Department knows about.</p> <p>8 Who in the Department?</p> <p>9 MR. BROWNLEE: All right. Well, I</p> <p>10 guess that's obvious.</p> <p>11 Q. (By Mr. Brownlee) Let me ask you -- and I</p> <p>12 believe it was Mr. McGovern's question, he asked</p> <p>13 about why you used NOV's to count for non-compliance</p> <p>14 as opposed to general complaints. Do you recall</p> <p>15 that?</p> <p>16 A. Yes.</p> <p>17 Q. And isn't it true that if a group wanted to</p> <p>18 complain about a quarry, they could call 50</p> <p>19 complaints in a day on a quarry?</p> <p>20 A. That's true, yes, they could do that.</p> <p>21 Q. And if those counted, you could literally</p> <p>22 make every quarry in the state a habitual violator by</p> <p>23 just continually calling in complaints?</p> <p>24 A. I believe that we'd have to locate some</p> <p>25 non-compliance rather than relying on an individual's</p>	<p>1 would not reach that statutory level necessarily,</p> <p>2 would it?</p> <p>3 A. No, it wouldn't.</p> <p>4 Q. And if you'll turn to the question that I</p> <p>5 think Mr. Mauer asked you about the site information</p> <p>6 form where they talk about that lease at the bottom,</p> <p>7 there's a notation made?</p> <p>8 A. It's in the mine plan.</p> <p>9 Q. Yeah. It's Exhibit MP-5.</p> <p>10 HEARING OFFICER: MP-5. Wait just a</p> <p>11 minute.</p> <p>12 Q. (By Mr. Brownlee) It's the third page.</p> <p>13 A. Yes.</p> <p>14 Q. And, again, I know we've been through this.</p> <p>15 The notation is "We are leasing from Eolia</p> <p>16 Development," correct?</p> <p>17 A. That's in the bottom box by the Source of</p> <p>18 Right to Mine.</p> <p>19 Q. Does that say that we presently have a lease</p> <p>20 with Eolia Development?</p> <p>21 A. No. It says, "We are leasing."</p> <p>22 Q. Does that mean that we're presently leasing</p> <p>23 or we are intending to lease?</p> <p>24 A. (Shrugs.)</p> <p>25 Q. You don't know?</p>

<p style="text-align: right;">Page 210</p> <p>1 A. I don't know.</p> <p>2 Q. Okay. And I know you stated Land</p> <p>3 Reclamation doesn't regulate blasting, correct?</p> <p>4 A. That's true.</p> <p>5 Q. Land Reclamation does not regulate the sewer</p> <p>6 damage remediation actions that might be taken either</p> <p>7 by the City or Magruder?</p> <p>8 A. The sewer -- could you say --</p> <p>9 Q. Remediation actions, if a break or leak</p> <p>10 would occur?</p> <p>11 A. That's correct.</p> <p>12 Q. It's not within your jurisdiction, is it?</p> <p>13 A. Not within the Land Reclamation Program.</p> <p>14 Q. And, in fact, civil suits for damages, you</p> <p>15 all have don't have any jurisdiction over those, do</p> <p>16 you, sir?</p> <p>17 A. Correct.</p> <p>18 Q. And you don't regulate blasting, do you,</p> <p>19 sir?</p> <p>20 A. In industrial minerals, we do not regulate</p> <p>21 blasting.</p> <p>22 MR. BROWNLEE: I have no further</p> <p>23 questions. Thank you.</p> <p>24 HEARING OFFICER: All right. Mr.</p> <p>25 McGovern?</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. (By Mr. McGovern) I also want you to take a</p> <p>2 look -- I think you just need to clarify this in the</p> <p>3 record. If you would take a look at Sub-Section C,</p> <p>4 top left-hand corner. We were talking about -- and</p> <p>5 this is again the issue with the leases and other</p> <p>6 written proof. In fact, it says, "or shall provide</p> <p>7 other written proof that she/he has determined the</p> <p>8 post-reclamation land use in conjunction with the</p> <p>9 landowner." Now, that's talking about what you're</p> <p>10 going to do with the ground after the mining is</p> <p>11 complete, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. We were then shown, when you look at the</p> <p>14 application, which I think we've identified different</p> <p>15 ways, but is it Applicant 3?</p> <p>16 HEARING OFFICER: The application --</p> <p>17 MR. MAUER: That's MP-5.</p> <p>18 HEARING OFFICER: We're working off</p> <p>19 MP-5, yes. Yes.</p> <p>20 Q. (By Mr. McGovern) MP-5?</p> <p>21 A. Yes.</p> <p>22 Q. And there were some questions asked if you</p> <p>23 go to the signature page.</p> <p>24 A. Page 5 of 5?</p> <p>25 Q. Yes.</p>
<p style="text-align: right;">Page 211</p> <p>1 MR. MCGOVERN: Thank you.</p> <p>2 EXAMINATION</p> <p>3 QUESTIONS BY MR. MCGOVERN:</p> <p>4 Q. If you would take a look just at the</p> <p>5 regulation pertaining to the maps, you were asked</p> <p>6 prior to the break and during the break to look for</p> <p>7 the word easement, that part?</p> <p>8 A. Correct.</p> <p>9 Q. I understand Mr. Brownlee has established</p> <p>10 that the word easement doesn't appear within that</p> <p>11 section.</p> <p>12 A. That's true.</p> <p>13 Q. But you do see the words "the names of any</p> <p>14 persons or business having any surface or sub-surface</p> <p>15 interest in the lands"?</p> <p>16 A. And it goes on to what I was referring to as</p> <p>17 utilities, yes. I see what you're saying.</p> <p>18 Q. The word utilities is there, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And would you equate an easement to a</p> <p>21 surface interest in land?</p> <p>22 MR. BROWNLEE: That calls for a legal</p> <p>23 conclusion, your Honor.</p> <p>24 MR. MCGOVERN: I'll withdraw it.</p> <p>25 HEARING OFFICER: Thank you.</p>	<p style="text-align: right;">Page 213</p> <p>1 A. Yes.</p> <p>2 Q. In Section 3, this refers to "I have</p> <p>3 obtained the approval of all landowners for all lease</p> <p>4 agreements made after October 28th, 1990, on leased</p> <p>5 land for all proposed post-mining land uses." So</p> <p>6 Number 3 only pertains to post-mining land uses,</p> <p>7 correct?</p> <p>8 A. Number 3, yeah, that's correct, it</p> <p>9 identifies that they... It refers to post-mining</p> <p>10 land uses.</p> <p>11 Q. Number 4 is another representation about</p> <p>12 lease agreements, but this one only relates to for</p> <p>13 all proposed seed mixtures, correct?</p> <p>14 A. Say that again. I'm sorry.</p> <p>15 Q. Number 4, the representation or the</p> <p>16 attestation made under Number 4 is only limited to</p> <p>17 for all proposed seed mixtures?</p> <p>18 A. Correct.</p> <p>19 Q. Now, if I go back to the site information</p> <p>20 and I go down to the box Source of Right to Mine, we</p> <p>21 certainly know it says lease. When the DNR utilizes</p> <p>22 this form and it references date of the agreement, is</p> <p>23 that referencing the date of the lease agreement?</p> <p>24 A. That would be my interpretation, that is, in</p> <p>25 fact, there was some type of agreement made on</p>

<p style="text-align: right;">Page 214</p> <p>1 4/18/07 or 5/1/07.</p> <p>2 Q. So this would suggest not that they're going</p> <p>3 to enter into a lease to mine the ground or that</p> <p>4 there's an intention to do it. This is a</p> <p>5 representation to you that on 4/18 of '07 an</p> <p>6 agreement was entered into described as a lease which</p> <p>7 would allow for the right to mine, correct?</p> <p>8 A. I would interpret it in that way.</p> <p>9 Q. If you go to the next box, now I'm dealing</p> <p>10 with mineral rights owner, Magruder Limestone</p> <p>11 Company. And, again, as you indicated to us earlier,</p> <p>12 it says, "Source of Right to Mine." You see that?</p> <p>13 A. Yes.</p> <p>14 Q. And that's not talking about post-mining</p> <p>15 activity, it's not talking about seed mixture; this</p> <p>16 would be at the front end, what is the right to</p> <p>17 access that property to mine the minerals, correct?</p> <p>18 A. That's true.</p> <p>19 Q. This one says, "Lease." Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And it gives a date of May 1st, 2007. Do</p> <p>22 you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And does that suggest to you that there was</p> <p>25 an agreement of some type, at least one we would</p>	<p style="text-align: right;">Page 216</p> <p>1 Reclamation Act, in accordance with the Land</p> <p>2 Reclamation Act, in that second sentence of Item</p> <p>3 Number 2, and I'm assuming that lease agreements are</p> <p>4 in part of the Land Reclamation Act, and that's where</p> <p>5 I'm having the difficulty in distinguishing.</p> <p>6 Q. And all I'm asking -- and that may be your</p> <p>7 interpretation, and that's fine. When we went back</p> <p>8 to the site information, there were two different</p> <p>9 boxes that reference source of right to mine, and it</p> <p>10 indicated lease. Now, earlier there was some</p> <p>11 testimony that the representation contained within</p> <p>12 Section 3 was the other written proof that would</p> <p>13 satisfy that requirement. I think we've -- at least</p> <p>14 I've attempted to demonstrate that isn't the case.</p> <p>15 Number 4 isn't going to do it because that deals with</p> <p>16 seed mixtures, and if I look at Number 2, Number 2</p> <p>17 doesn't affirmatively state that the Applicant has</p> <p>18 the right to mine the ground. That's all I'm asking,</p> <p>19 if there's any representation within that section</p> <p>20 that would satisfy the other written proof</p> <p>21 demonstrating a source of right to mine.</p> <p>22 A. I would interpret Number 2 as that the</p> <p>23 company has obtained all the requirements for such</p> <p>24 instances as lease agreements pertaining to the</p> <p>25 surface mining operation.</p>
<p style="text-align: right;">Page 215</p> <p>1 describe as a lease, entered into on May 1 of 2007?</p> <p>2 A. I would say yes. I'd say that there was</p> <p>3 some type of a lease agreement entered into with</p> <p>4 Magruder and Eolia on May 1st, '07.</p> <p>5 Q. Now, based on the testimony you heard</p> <p>6 earlier today, you know that's not correct, right?</p> <p>7 There is no lease?</p> <p>8 A. That's what I've heard during testimony.</p> <p>9 Q. And when I go back to Page 5 of 5, none of</p> <p>10 those representations contained within the part that</p> <p>11 says, "By my signature I attest to the following"</p> <p>12 reflects any representation as to how the Applicant</p> <p>13 has a right to mine the ground; is that correct?</p> <p>14 A. I'm reading at Number 2 on Page 5 of 5. "I</p> <p>15 or the company am authorized to represent a mine in</p> <p>16 accordance with the mine plan form in accordance with</p> <p>17 the Land Reclamation Act."</p> <p>18 Q. But that doesn't suggest that I have the</p> <p>19 right to access the property to mine the ground,</p> <p>20 correct?</p> <p>21 A. Could you restate that? Because I'm having</p> <p>22 difficulty --</p> <p>23 Q. Sure.</p> <p>24 A. Where I'm having the difficulty at, and</p> <p>25 please excuse me, is that it says within the Land</p>	<p style="text-align: right;">Page 217</p> <p>1 Q. In fact, you could come to that conclusion</p> <p>2 based upon the manner in which they completed the</p> <p>3 form where they represent that as to source of right</p> <p>4 to mine lease they have a date of April 18, 2007, and</p> <p>5 then down below with the mineral rights owner they</p> <p>6 reference a lease agreement dated May 1, 2007,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. When I was asking you questions earlier, I</p> <p>10 don't think I asked you about whether or not issues</p> <p>11 of non-compliance could arise from complaints from</p> <p>12 the public. I thought I was asking about issues of</p> <p>13 non-compliance observed during an inspection. Is</p> <p>14 that what you understood me to ask?</p> <p>15 A. What I was understanding was that if you</p> <p>16 went out to the mine site and actually observed</p> <p>17 something.</p> <p>18 Q. The DNR did that?</p> <p>19 A. Correct.</p> <p>20 Q. You didn't interpret my questions to mean</p> <p>21 any member of the public who simply calls on the</p> <p>22 phone and says, hey, I think there's a problem, did</p> <p>23 you?</p> <p>24 A. No, I did not.</p> <p>25 Q. So if there is a notation within an</p>

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<p>1 inspection report that indicates non-compliance but</p> <p>2 for whatever reason that inspector decided not to</p> <p>3 issue a notice of violation, at least under the</p> <p>4 interpretation currently filed by the DNR, that</p> <p>5 wouldn't count as non-compliance, correct?</p> <p>6 A. Generally speaking, correct. Yes.</p> <p>7 Q. And that's just an internal decision made</p> <p>8 that it must be at least a notice of violation; is</p> <p>9 that right?</p> <p>10 A. I believe that when we did send out that</p> <p>11 notice to everyone we did, in fact, say -- we stated</p> <p>12 the rules and -- or the portion of the law that's</p> <p>13 applicable. And it did state non-compliance.</p> <p>14 MR. MCGOVERN: I have nothing</p> <p>15 further.</p> <p>16 HEARING OFFICER: Mr. Mauer?</p> <p>17 EXAMINATION</p> <p>18 QUESTIONS BY MR. MAUER:</p> <p>19 Q. That site examination sheet we were just</p> <p>20 looking at where the lease box was checked. One</p> <p>21 question, sir. As you sit here today, are you aware</p> <p>22 of any document that would show that Magruder</p> <p>23 Limestone Company, Inc., is actually the mineral</p> <p>24 rights owner for this proposed quarry site?</p> <p>25 A. I'm not aware of any document.</p>	<p>1 are dismissed. Thank you. Let me have... Let me</p> <p>2 make sure I've got all of my... That's Applicant's 2</p> <p>3 and MP-5 and, Mr. Duggan, that's yours, I believe.</p> <p>4 Mr. Duggan, you're recognized to call your</p> <p>5 next witness.</p> <p>6 MR. DUGGAN: Larry Coen.</p> <p>7 HEARING OFFICER: Mr. Coen, will you</p> <p>8 come forward to be sworn.</p> <p>9 LARRY COEN,</p> <p>10 of lawful age, produced, sworn, and examined on</p> <p>11 behalf of the Respondent, deposes and says:</p> <p>12 HEARING OFFICER: Please have a seat.</p> <p>13 EXAMINATION</p> <p>14 QUESTIONS BY MR. DUGGAN:</p> <p>15 Q. Please state your name.</p> <p>16 A. Larry Coen.</p> <p>17 Q. And what is your role in this case, Mr.</p> <p>18 Coen?</p> <p>19 A. I'm the Staff Director for the Land</p> <p>20 Reclamation Commission, and I signed the</p> <p>21 recommendation documents that led to this hearing</p> <p>22 request.</p> <p>23 Q. Okay. Just for convenience, I'll hand you a</p> <p>24 copy of BP-3. Is that your recommendation?</p> <p>25 A. Yes, it is.</p>
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<p>1 MR. MAUER: Thank you. Nothing</p> <p>2 further.</p> <p>3 HEARING OFFICER: Mr. Brownlee, any</p> <p>4 redirect?</p> <p>5 MR. BROWNLEE: Well, not based upon</p> <p>6 these questions, no, sir.</p> <p>7 HEARING OFFICER: Mr. Duggan, I</p> <p>8 apologize. Was there anything that arose in the</p> <p>9 recross which --</p> <p>10 MR. DUGGAN: No.</p> <p>11 HEARING OFFICER: Okay. Then we are</p> <p>12 completed with Mr. Zeaman's testimony?</p> <p>13 MR. DUGGAN: Yes.</p> <p>14 HEARING OFFICER: And at this time</p> <p>15 you move for Exhibit RP-1 to be introduced?</p> <p>16 MR. DUGGAN: Yes, I do.</p> <p>17 HEARING OFFICER: Any objection to</p> <p>18 RP-1? No objection? It is received. And I believe</p> <p>19 all of the other documents which -- no, wait. I'm</p> <p>20 sorry. Mr. Zeaman has testified to BP-1, BP-2 and</p> <p>21 BP-3. Are there any objections to those exhibits now</p> <p>22 being received into the record?</p> <p>23 MR. BROWNLEE: No.</p> <p>24 HEARING OFFICER: No objections?</p> <p>25 They are received. And with that, Mr. Zeaman, you</p>	<p>1 Q. Now, you've heard Mr. Roberts and Mr. Zeaman</p> <p>2 both testify today; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Much of the discussion when they were on the</p> <p>5 witness stand concerned the timing of when they</p> <p>6 learned that certain information was not in the</p> <p>7 original application as submitted; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And that includes information on the</p> <p>10 detailed site map, specifically the illustration of</p> <p>11 utilities or easements, however you want to describe</p> <p>12 that, and the absence of an indication of post-mining</p> <p>13 land use; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, you are aware, having heard this</p> <p>16 testimony, that this information was missing, if you</p> <p>17 will, from the original application at the time you</p> <p>18 made that recommendation to the Commission; is that</p> <p>19 right?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. That being the case today, what</p> <p>22 position do you have with respect to your ability to</p> <p>23 require another public notice be issued?</p> <p>24 A. Once the Program takes this hearing request</p> <p>25 matter before the Commission and the Commission does</p>

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<p>1 accept the recommendation and then orders the 2 hearing, the Program no longer has the ability to 3 make changes or make orders or do anything with the 4 application until the hearing is held and a decision 5 has been made. We don't have the opportunity to take 6 it back and do anything with it. 7 Q. Okay. Apparently Magruder was allowed by 8 your staff to submit an updated map to reflect that 9 information in February of 2008. Is that an 10 acceptable practice as far as you're concerned as the 11 Program Director? 12 A. It is very common to add additional 13 information to an original application, yes. 14 Q. Okay. And the Commission can take that up 15 along with the rest of the case; is that right? 16 A. That's correct. 17 Q. Your recommendation as was submitted to the 18 Commission in September of 2007, did it address any 19 concern about whether the issuance of the permit 20 would unduly impair any person's health, safety or 21 livelihood? 22 A. The recommendation acknowledges a number of 23 issues that had been raised and offers some comments 24 on those topics, but we don't feel it's appropriate 25 for the Program to make a determination on health,</p>	<p>1 Q. Regarding the health, safety or livelihood, 2 is it my understanding that the Land Reclamation 3 staff really makes no recommendations on that portion 4 of this decision one way or the other? 5 A. That's correct. 6 Q. If you saw a situation where let's just -- 7 well, I'm not even going to go there because I can't 8 imagine. Well, I'll start off regarding the 9 non-compliance issues that have been discussed. The 10 Land Reclamation Commission utilizes NOV's that are 11 obtained through polling the rest of the DNR; is that 12 not correct? 13 A. That's correct. 14 Q. And if you used a complaint situation as the 15 basis to determine non-compliance, isn't it true that 16 a group or an individual could file hundreds of 17 complaints against a quarry that would essentially 18 make it a habitual violator if you considered 19 complaints? 20 A. I don't think that anyone has suggested that 21 we would use complaints as a basis. 22 Q. But if you used complaints, you could 23 essentially prevent any quarry from expanding just by 24 having a person that was bent on making multiple 25 complaints to make them a habitual violator?</p>
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<p>1 safety or livelihood prior to the hearing. 2 Q. Why not? 3 A. The hearing is the occasion when all the 4 evidence is going to be brought up that will relate 5 to health, safety and livelihood. We would be fairly 6 premature in trying to make those determinations when 7 we haven't heard that evidence. 8 MR. DUGGAN: No further questions. 9 HEARING OFFICER: Mr. Brownlee, do 10 you wish to call this witness in support of the 11 Applicant's case? 12 MR. BROWNLEE: If you word it that 13 way, I guess -- I'm calling another state witness. 14 HEARING OFFICER: The reason I say 15 that is -- 16 MR. BROWNLEE: I'm not calling him as 17 my witness, no, but I'll cross-examine him. 18 HEARING OFFICER: You wish to 19 cross-examine. I'm not sure that there is a single 20 thing on this subject to offer on cross-examination. 21 MR. BROWNLEE: Okay. 22 HEARING OFFICER: But I'll grant you 23 one. 24 EXAMINATION 25 QUESTIONS BY MR. BROWNLEE:</p>	<p>1 A. If we did that, yes. I'm not aware that we 2 have ever used complaints as a basis. 3 Q. To your knowledge as Director, is the 4 publication that was undertaken in this permit legal 5 under statute and regulation? 6 A. Yes. 7 Q. And the set-back issues that we've talked 8 about, are they legal under the Missouri law? 9 A. Yes. 10 Q. And there's been some discussion about why 11 the Department didn't have an environmental impact 12 statement. Is anything required by your department 13 to issue a permit, any requirement about an 14 environmental impact statement? 15 A. No, it does not. 16 Q. And the issue on a public meeting, is it -- 17 when public meetings come up in this kind of a 18 situation, are they often held? 19 A. We have had several public meetings in this 20 kind of situation. Many times operators do not agree 21 to it, but we've had a number. 22 Q. Okay. Let me just make a note here. And, 23 again, I think you'd asked -- well, Mr. Duggan asked 24 you about the supplemental information. If the maps 25 originally filed with the Department would have had</p>

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<p style="text-align: right;">Page 226</p> <p>1 easements listed and indicated, would those have ever 2 in terms of public notice gone to the public, those 3 maps? 4 A. No. 5 Q. So a person that wanted to obtain additional 6 information would have to do what they would have to 7 do in any case, that is, come to the DNR or come to 8 LRC and look at the program -- or look at the 9 application and do a Sunshine request? 10 A. That's correct. 11 Q. Now, regarding the necessity for easements, 12 you're aware that easements is not mentioned in that 13 regulation, are you, sir? 14 A. That's correct. 15 Q. And has it been the position of the Land 16 Reclamation Program up until this point that you do 17 not require easements? 18 A. Well, you've heard the testimony of the 19 others. It's been my experience that we have not 20 required strict easements; we have only required 21 where there is land ownership involved. 22 Q. So when Magruder filed this, at the time, 23 the rule or the procedure of your department was you 24 did not require easements? 25 A. Well, I don't do these reviews.</p>	<p style="text-align: right;">Page 228</p> <p>1 accurate? 2 A. That's correct. 3 Q. Now, in fact, the Program has gone back and 4 changed its position once a hearing took place, 5 hasn't it? 6 A. Once a hearing takes place, yes. 7 Q. All right. So what you're suggesting is at 8 least prior to the hearing the Department, you 9 believe, loses any ability to do anything with the 10 process; is that correct? 11 A. Well, the process has its own course. No, 12 we can't intervene in the process once it's been 13 ordered by the Commission. 14 Q. Now, in the prior case -- and you certainly 15 know what I'm referring to. It's Lincoln County 16 Stone? 17 A. Yes. 18 Q. The case went up, hearing took place, went 19 to the Court of Appeals, came back for another 20 hearing, correct? 21 A. That's correct. 22 Q. And prior to the termination or even the 23 commencement of that hearing, the Department changed 24 its position based upon the information provided, 25 correct?</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. I understand. 2 A. Bill and his staff do those reviews, and I 3 can't speak for what they've been requiring. I'm not 4 aware that it's been required. 5 Q. Okay. 6 A. But by the same token, it certainly doesn't 7 hurt to include information. 8 Q. I understand, but the checklist -- and 9 you're the Director -- has nothing in there that 10 requires that you supply easements, does it, sir? 11 A. I haven't seen this checklist. 12 Q. You don't know, okay. 13 MR. BROWNEE: I have nothing 14 further. 15 HEARING OFFICER: Mr. McGovern? 16 MR. MCGOVERN: Thank you. 17 EXAMINATION 18 QUESTIONS BY MR. MCGOVERN: 19 Q. All right, Mr. Coen, you indicated that once 20 the Commission grants a request for hearing that the 21 department loses any jurisdiction whatsoever to 22 change its position; is that correct? 23 A. That's not what I said. 24 Q. I think you said the Program no longer has 25 ability to do anything with the process. Is that</p>	<p style="text-align: right;">Page 229</p> <p>1 A. In between the two hearings, yes. 2 Q. Correct. 3 A. Yes. 4 Q. Before it was over? 5 A. Based on a court order to review their 6 decision, yes. 7 Q. Fair enough. In terms of the -- your 8 testimony -- and I didn't quite follow it. The 9 question was asked about the submittal of additional 10 information after an application is filed. You 11 indicated it is common to add additional information; 12 is that correct? 13 A. Yes. 14 Q. Is it common that the additional information 15 comes in after the notice of publication goes out? 16 A. No. 17 Q. And, in fact, from your perspective, you 18 deemed the application to be complete the day that 19 the Department gives notice to proceed with 20 publication, correct? 21 A. That's correct. 22 Q. So once the Department says okay, we deem 23 the application complete, which I think in this case 24 was May, you may proceed to publication, at that 25 point the Department deems the application process or</p>

<p style="text-align: right;">Page 230</p> <p>1 the application itself a completed document, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And we know from prior testimony what that</p> <p>4 means is that the Applicant has complied with both</p> <p>5 the provisions of the statute, 444.772, as well as</p> <p>6 the provisions contained within the regulations</p> <p>7 promulgated by virtue of that same statute, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. The distinction we were talking about public</p> <p>10 meetings and public hearings, from the standpoint of</p> <p>11 the public meeting, as I understand it, that is</p> <p>12 simply an opportunity for the Applicant to meet with</p> <p>13 all of the public who are concerned or affected and</p> <p>14 try to listen to their concerns and possibly address</p> <p>15 those concerns; is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. And we know in this case when that</p> <p>18 invitation was made to Magruder, they rejected that</p> <p>19 opportunity, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. The alternative is a hearing, which is what</p> <p>22 we're doing today, correct?</p> <p>23 A. Correct.</p> <p>24 Q. You were asked a lot of questions about</p> <p>25 habitual violator. Now, habitual violator is an</p>	<p style="text-align: right;">Page 232</p> <p>1 related companies; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And other related companies could be those</p> <p>4 in which there is similar ownership or management</p> <p>5 with respect to either the labor or the flow of</p> <p>6 material; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And do you know if there was any internal</p> <p>9 investigation done to determine whether any of the</p> <p>10 related Magruder companies have violation histories</p> <p>11 other than just Magruder Limestone Company?</p> <p>12 A. I'm not aware of that.</p> <p>13 Q. In fact, when we looked at the request</p> <p>14 submitted by Mr. Zeaman, it only referenced Magruder</p> <p>15 Limestone Company, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Do you know if there was ever a question</p> <p>18 asked of Magruder as to whether, in fact, there are</p> <p>19 other related companies?</p> <p>20 A. I don't know.</p> <p>21 Q. And in all fairness, as the Director of this</p> <p>22 department, you don't get involved in those</p> <p>23 day-to-day type of investigations or completeness</p> <p>24 reviews, do you?</p> <p>25 A. No, I don't.</p>
<p style="text-align: right;">Page 231</p> <p>1 entirely separate provision contained within the</p> <p>2 solid waste regulation; isn't that correct?</p> <p>3 A. I don't know what's in the solid waste</p> <p>4 regulation.</p> <p>5 Q. Does Land Reclamation have a habitual</p> <p>6 violator regulation?</p> <p>7 A. It has language in Paragraph 4 of 773 that</p> <p>8 has been termed to be similar to that, but no, they</p> <p>9 don't call it habitual violator.</p> <p>10 Q. In fact, a habitual violator regulation</p> <p>11 specifically identifies those type of violations that</p> <p>12 constitute violations for purposes of qualifying as a</p> <p>13 habitual violator, don't they?</p> <p>14 A. Well, again, I'm not familiar with those</p> <p>15 other environmental laws, so I can't really --</p> <p>16 Q. Are you aware that notice of violations are</p> <p>17 not included within the calculation of habitual</p> <p>18 violator?</p> <p>19 A. No, I'm not aware.</p> <p>20 Q. In this statute, though, it only refers to</p> <p>21 language pattern of non-compliance; is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Now, you agree that for purposes of</p> <p>24 determining non-compliance we should not only be</p> <p>25 looking at Magruder Limestone Company but also other</p>	<p style="text-align: right;">Page 233</p> <p>1 Q. And with regard to whether this application</p> <p>2 was complete, you're not only relying on Mr. Zeaman,</p> <p>3 but you're relying on the staff below him to do what</p> <p>4 the regulations require; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. So if we wanted to find out really what the</p> <p>7 Department does or doesn't do with respect to that</p> <p>8 completeness review, the folks we should ask are the</p> <p>9 ones we've already talked to, Mr. Zeaman and</p> <p>10 Mr. Roberts, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And just so we understand the idea of,</p> <p>13 again, violations and non-compliance, I think it was</p> <p>14 you who had indicated there are some 800 quarries</p> <p>15 within the state of Missouri; is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And that the goal of the Department is to</p> <p>18 try to conduct an inspection at each of those</p> <p>19 quarries at least once every three years; is that</p> <p>20 correct?</p> <p>21 A. That's the goal, yes.</p> <p>22 Q. But that oftentimes doesn't happen, though,</p> <p>23 correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And that's because you don't have adequate</p>

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<p>1 staff to actually perform that many investigations, 2 correct? 3 A. Correct. 4 Q. And you heard Mr. Roberts testify in terms 5 of the number of inspections he has conducted, those 6 instances in which he found non-compliance and then 7 one instance in which he actually issued a notice of 8 violation, correct? 9 A. Correct. 10 Q. And is it, in fact, the position of the 11 Department in determining a history of non-compliance 12 or pattern of non-compliance we should only look at 13 notice of violations or greater? 14 A. Yes. 15 Q. And if, in fact, Mr. Roberts goes out, 16 conducts an investigation and sees multiple instances 17 of non-compliance but through the CCP process decides 18 not to issue an NOV and that information is contained 19 within their inspection report, you don't count 20 those; is that right? 21 A. That is correct. 22 Q. Is there a policy or something that was 23 promulgated by the DNR that reflects that position on 24 whether -- or what is and what is not non-compliance? 25 A. There is not a written policy. This came</p>	<p>1 Q. Sure. Let me just back up. Before you 2 would recommend approval of a permit, the application 3 you would have to be led to believe would have to be 4 complete, right? 5 A. That's correct. 6 Q. Because, in fact, if the application were 7 incomplete, you would have to recommend denial, 8 right? 9 A. I don't agree with that. 10 Q. If the permit was incomplete and you were at 11 the point that you're going to decide what am I going 12 to do, recommend approval or not, if the permit is 13 incomplete, would you then not have to recommend 14 denial? 15 A. I don't agree with that. Probably more than 16 half the time we must request additional information 17 from operators because we haven't found the permit 18 yet to be complete. 19 Q. But at some point in time you have to 20 decide, this permit is either complete or I'm going 21 to recommend denial? 22 A. At some point in time if we could not get 23 the cooperation of the Applicant to complete the 24 application, we would have to deny it, yes. 25 Q. So before you would recommend approval of a</p>
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<p>1 from the Commission itself based on advice from their 2 attorney at the time. 3 MR. MCGOVERN: I don't have anything 4 further, Mr. Tichenor. 5 HEARING OFFICER: Mr. Mauer? 6 EXAMINATION 7 QUESTIONS BY MR. MAUER: 8 Q. Thank you, Mr. Coen. Mr. Coen, I want to go 9 back to the application. Fair to say you didn't 10 review it, at least in any detail? 11 A. That's correct. 12 Q. You relied on what your staff did for you, 13 and in preparing your report, it was given to you and 14 ultimately you signed it? 15 A. That's correct. 16 Q. And that report that we've looked at, I 17 believe that might be in front of you, that's BP No. 18 3? 19 A. Yes. 20 Q. All right. When you signed BP No. 3, you 21 were led to believe that the application was complete 22 and therefore -- at the time and therefore you could 23 give notice to proceed to publication and that the 24 requirements had been satisfied, right? 25 A. Could you say that again, please?</p>	<p>1 permit, you would have to be convinced that the -- 2 based on the information you have, the application is 3 complete? 4 A. Yes. 5 Q. All right. Now, you've heard from 6 Mr. Roberts and you've heard from Mr. Zeaman. I 7 believe you may have even attended their depositions. 8 You subsequently learned that there was information 9 that was missing from the application, correct? 10 A. Yes. 11 Q. And they deemed that information to be of 12 such a nature that the application was incomplete? 13 A. I've heard that today, yes. 14 Q. All right. Now, when it comes to deciding 15 whether or not the application is complete or not, 16 are you going to rely upon your staff and what they 17 recommend to you, that the application was missing 18 items and therefore it was incomplete? 19 A. Yes. 20 Q. All right. Now, as I understand it, after 21 you determined that the application is complete, then 22 you go forward and order that publication occur, 23 right? 24 A. Yes. 25 Q. And just so we're clear, were you here when</p>

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<p>1 Mr. Zeaman and Mr. Roberts said that as -- after the</p> <p>2 February 2008 publication -- or submission it was now</p> <p>3 a complete application?</p> <p>4 A. Yes.</p> <p>5 Q. All right. Do you agree with that?</p> <p>6 A. Yes.</p> <p>7 Q. Have you since determining -- now, so then</p> <p>8 as of the February 2008 submission, you deemed the</p> <p>9 application to be complete?</p> <p>10 A. I haven't done anything to officially make</p> <p>11 that kind of a declaration.</p> <p>12 Q. Do you deem it complete as we sit here</p> <p>13 today?</p> <p>14 A. Yes.</p> <p>15 Q. All right. As a result of the February</p> <p>16 supplementation?</p> <p>17 A. Yes.</p> <p>18 Q. All right. Has the operator published any</p> <p>19 notice of intent to operate a surface mine in any</p> <p>20 newspaper following your determination in February of</p> <p>21 2008 that the application is complete?</p> <p>22 A. No.</p> <p>23 Q. Isn't it true, sir, that there have been</p> <p>24 situations where the Land Rec Program has required an</p> <p>25 applicant to go back and file a new application?</p>	<p>1 any other demands. Demands on who? On the</p> <p>2 Applicant?</p> <p>3 A. Correct.</p> <p>4 Q. They're not going to take any other action</p> <p>5 directed towards the application; is that right?</p> <p>6 A. Well, obviously, in some conversation we</p> <p>7 have asked the Applicant to submit a map to clear up</p> <p>8 some things. We are not going to tell the Applicant</p> <p>9 at this point to rerun their public notice or start</p> <p>10 over again. That is something that will need to come</p> <p>11 out as a finding of the hearing.</p> <p>12 Q. But you did go to the Applicant and say,</p> <p>13 wait a minute, you have to give us a new map that</p> <p>14 identifies the things that are required by our code</p> <p>15 of regulations and state statute?</p> <p>16 A. Yes.</p> <p>17 Q. So you did make that demand on the</p> <p>18 Applicant?</p> <p>19 A. Right.</p> <p>20 Q. Did you do anything to open up the process</p> <p>21 whereby additional people could request a public</p> <p>22 hearing such that they could participate in the</p> <p>23 hearing process following the new map being</p> <p>24 submitted?</p> <p>25 A. No.</p>
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<p>1 A. We have required applicants to submit</p> <p>2 additional information or make changes. I don't</p> <p>3 recall that we have returned an application and</p> <p>4 required them to submit a new one all over again.</p> <p>5 Q. Okay. Let me try again. Have you ever had</p> <p>6 a situation where following the notice to publish,</p> <p>7 your program acquired information such that you said,</p> <p>8 hey, wait a minute, this application is incorrect,</p> <p>9 you need to go back and file a new application?</p> <p>10 A. Yes.</p> <p>11 Q. So that has occurred?</p> <p>12 A. Yes.</p> <p>13 Q. You said that once the Land Rec Commission</p> <p>14 grants a hearing, then your department loses control</p> <p>15 of the process; is that right?</p> <p>16 A. Once the Commission has ordered a hearing,</p> <p>17 it becomes a legal process, and no, we don't</p> <p>18 interfere with that process until it's concluded.</p> <p>19 Q. What do you mean by "we don't interfere"?</p> <p>20 A. The Program is not going to make any more</p> <p>21 demands or issue any findings or take any kind of</p> <p>22 action on the permit until the hearing process is</p> <p>23 completed.</p> <p>24 Q. So the program, the Land Rec Program, your</p> <p>25 department, is not going to take any other -- make</p>	<p>1 Q. Tell me if this is an unfair</p> <p>2 characterization, then: You made a demand on</p> <p>3 Magruder to allow them to submit additional</p> <p>4 information to make their application complete, but</p> <p>5 you didn't allow anybody else to come in and join</p> <p>6 into the hearing process that might have concerns as</p> <p>7 a result of that new map?</p> <p>8 A. That's an unfair characterization.</p> <p>9 Q. And why is that unfair?</p> <p>10 A. We asked for the map as clarification for</p> <p>11 the Commission to have in making their final</p> <p>12 decision, whatever that might be. We were not doing</p> <p>13 it to help Magruder.</p> <p>14 Q. Okay. Magruder's mine plan has a 50-foot</p> <p>15 inset all around -- parallel to their boundary lines,</p> <p>16 right?</p> <p>17 A. That's correct.</p> <p>18 Q. Would you agree with me that it's a very</p> <p>19 small percentage of applications that you receive</p> <p>20 that actually go around and inset their mine plan all</p> <p>21 the way around their property boundaries?</p> <p>22 A. Yes.</p> <p>23 Q. In fact, less than 5 percent of the</p> <p>24 applications actually do that?</p> <p>25 A. Yes.</p>

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<p>1 Q. And just so I'm clear, there's nothing in 2 your recommendation that evaluates the potential 3 danger of this quarry operation to the Joint Sewer 4 Board sewage treatment plant or the two sewage forced 5 mains that pass through the quarry? 6 A. That's correct. 7 Q. Now, I thought you said previously that you 8 don't make the determination regarding health, safety 9 and livelihood at the application stage. Did I 10 understand that testimony right? 11 A. That's correct. 12 Q. Is it true, sir, that at least in one other 13 occasion you did evaluate health, safety and 14 livelihood prior to making a recommendation? 15 A. That's correct. 16 Q. And in that situation when you did evaluate 17 it, you determined that there would be a potential 18 impact and therefore recommended denial? 19 A. That's correct. 20 Q. Now, in this case Magruder didn't give your 21 staff the information about the sewer treatment 22 lines, the sewage treatment plant or the Ameren UE 23 lines, correct? 24 A. That's correct. 25 Q. So you didn't have the opportunity to make a</p>	<p>1 that Magruder Limestone Company is the Applicant 2 here? 3 A. Yes. 4 Q. And Magruder Limestone Company is operating 5 other quarries in the state of Missouri, right? 6 A. Yes. 7 Q. Did you send any of your staff out to 8 investigate or inspect any of those other quarries to 9 see if they were in compliance? 10 A. No. 11 Q. So you didn't make any special investigative 12 trips to any of the Magruder Limestone quarries? 13 A. That's correct, we did not. 14 Q. As you sit here today, when's the last time 15 that you're aware that anyone from your staff 16 actually inspected a Magruder Limestone quarry? 17 A. I wouldn't have that information. 18 Q. Okay. As I understand it, you hope to have 19 every quarry site inspected once every three years, 20 right? 21 A. Yes. 22 Q. And the history of non-compliance only goes 23 back five years, right? 24 A. Correct. 25 Q. So best case scenario, your program would</p>
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<p>1 determination on the health, safety and livelihood -- 2 to make that determination prior to making your 3 recommendation, true? 4 A. That's true. 5 Q. When you're looking at notices of violations 6 or non-compliance, all right, I want to talk about 7 that for just a minute, did you do anything to 8 investigate other Magruder -- specific Magruder 9 quarry sites on any reported problems? 10 A. The request that went out to other programs 11 was a request on the Magruder Company. It wasn't 12 specific to any one location. 13 Q. Okay. Let me try it this way: You know 14 that Magruder operates several quarries in the state 15 of Missouri? 16 A. Yes. 17 Q. Did you do anything to cause an 18 investigation of any of those other sites so that you 19 would have information about their compliance? 20 A. Well, I thought I'd answered that question. 21 We asked other environmental programs if they had 22 records of non-compliance at any of the Magruder 23 quarries. 24 Q. Yes, sir. I'm sorry. If I asked a bad 25 question, I apologize. Let me try again. You know</p>	<p>1 have perhaps two inspections during that five-year 2 period if you met the every three years of 3 inspection? 4 A. That's correct. 5 Q. Is it fair to say that sometimes due to 6 staffing and other concerns you can't make it every 7 three years? 8 A. That's correct. 9 Q. And then if an inspection did occur, you'd 10 only count it if it was actually written up as an 11 NOV? 12 A. That's correct. 13 Q. So if a CC&P process was instigated, you 14 wouldn't know -- you wouldn't count that as part of 15 the history of non-compliance? 16 A. That's correct. 17 Q. Mr. Brownlee asked you about complaints. 18 And I understand you don't base history of 19 non-compliance off of complaints, right? 20 A. That's correct. 21 Q. As a result of this application, did your 22 office or department do anything to follow up on any 23 particular complaints involving Magruder Limestone 24 Company to find out if the complaints had been 25 rectified, to find out if the CCP process had been</p>

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<p>1 satisfied and followed through?</p> <p>2 A. I'm aware that there have been complaints</p> <p>3 that have been investigated. I don't get into the</p> <p>4 details of those normally, so I don't know that I can</p> <p>5 answer specific questions. I know that there were</p> <p>6 complaints about the Sunrise Beach quarry that</p> <p>7 Magruder operates, and we did travel to that site as</p> <p>8 a basis of that complaint.</p> <p>9 Q. Following the site visit, did your office do</p> <p>10 anything to follow up and find out from the Sunrise</p> <p>11 Beach complainant if the problems had been rectified?</p> <p>12 A. The nature of the complaints were water, air</p> <p>13 and odor issues that we don't -- we would not follow</p> <p>14 up. They were not mining complaints. And what other</p> <p>15 programs have done I don't know.</p> <p>16 Q. Would you disagree with me that water, air,</p> <p>17 odor -- and what was the other one you said?</p> <p>18 A. I said water, air and odor.</p> <p>19 Q. Okay. Would you agree with me that water,</p> <p>20 air and odor can impact health, safety and</p> <p>21 livelihood?</p> <p>22 A. Yes.</p> <p>23 Q. All right. So if there are continuing</p> <p>24 complaints and problems with Magruder causing water,</p> <p>25 air and odors, that would be important for a</p>	<p>1 Q. Mr. Coen, you were familiar with the</p> <p>2 expression of concern raised by various public</p> <p>3 comment letters concerning the proximity of the sewer</p> <p>4 treatment plant and the forced mains; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Was the expression of those concerns</p> <p>7 standing alone an adequate basis for you to even make</p> <p>8 a recommendation concerning health, safety or</p> <p>9 livelihood?</p> <p>10 A. No. Again, there's -- there was really no</p> <p>11 evidence offered that -- simply statements of</p> <p>12 concern.</p> <p>13 Q. Did you make any sort of recommendation to</p> <p>14 the Commission as to whether the Commission should</p> <p>15 grant the hearing we're involved in today, or was</p> <p>16 that strictly up to the Commission?</p> <p>17 A. It was up to the Commission, hearing all</p> <p>18 parties as they took advantage of the opportunity in</p> <p>19 September to convince the Commission to order a</p> <p>20 hearing.</p> <p>21 Q. And you were neutral at that meeting?</p> <p>22 A. Yes.</p> <p>23 MR. DUGGAN: No further questions.</p> <p>24 HEARING OFFICER: Mr. Brownlee,</p> <p>25 recross?</p>
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<p>1 determination of impact on health, safety and</p> <p>2 livelihood?</p> <p>3 A. Yes.</p> <p>4 Q. But you haven't done anything to find out if</p> <p>5 those problems at Sunrise Beach or any other quarry</p> <p>6 have been rectified?</p> <p>7 A. Again, those were not mining complaints.</p> <p>8 They were complaints that were investigated by other</p> <p>9 programs.</p> <p>10 Q. Okay. So as you sit here today, you don't</p> <p>11 have that information to offer to the Hearing Officer</p> <p>12 on whether or not those complaints were rectified?</p> <p>13 A. That's correct.</p> <p>14 Q. And, in fact, unless it was written up as an</p> <p>15 NOV, you wouldn't have received those responses to</p> <p>16 the inquiry that you sent out to the other department</p> <p>17 directors?</p> <p>18 A. That's correct.</p> <p>19 MR. MAUER: Nothing further.</p> <p>20 HEARING OFFICER: Nothing further?</p> <p>21 Any redirect, Mr. Duggan?</p> <p>22 MR. DUGGAN: Yes.</p> <p>23 HEARING OFFICER: Proceed.</p> <p>24 EXAMINATION</p> <p>25 QUESTIONS BY MR. DUGGAN:</p>	<p>1 MR. BROWNLEE: Let me take just a</p> <p>2 second.</p> <p>3 HEARING OFFICER: Okay.</p> <p>4 EXAMINATION</p> <p>5 QUESTIONS BY MR. BROWNLEE:</p> <p>6 Q. Just real quick. You stated, I think, to</p> <p>7 Mr. McGovern that once you'd learned or once you'd</p> <p>8 determined it to be complete that you couldn't ask</p> <p>9 for any information because you didn't know about the</p> <p>10 sewer problems. In fact -- or the sewer issues. In</p> <p>11 fact, you all knew about the sewer issues from the</p> <p>12 complaint letters, didn't you?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And at that time when you had those</p> <p>15 complaint letters, had you determined it to be</p> <p>16 complete?</p> <p>17 A. Yes.</p> <p>18 Q. You had?</p> <p>19 A. The application was deemed complete before</p> <p>20 the public notice and before we had gotten any</p> <p>21 letters.</p> <p>22 Q. Well, assume that there had been an issue</p> <p>23 raised to a scientific level of health, safety or</p> <p>24 livelihood. Is there anything you could -- the</p> <p>25 Department could do to ask Magruder to do something</p>

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<p>1 about the sewer line? I mean, what -- I'm trying to 2 get what people wanted you to do. What's the 3 Department's jurisdiction over that sewer line? 4 MR. MCGOVERN: Objection. Improper 5 hypothetical. Calls for speculation as phrased. 6 MR. MAUER: And calls for a legal 7 conclusion. 8 MR. BROWNLEE: Well, let me try -- 9 HEARING OFFICER: Well, that's the 10 problem I'm sitting here faced with. I don't have an 11 easement in this record. 12 MR. BROWNLEE: Right. 13 HEARING OFFICER: And this man's not 14 an attorney and he hasn't read the easement, has he? 15 MR. COEN: No. 16 HEARING OFFICER: I'm going to 17 sustain the objection. 18 MR. BROWNLEE: Well, maybe I can 19 rephrase it. 20 Q. (By Mr. Brownlee) Is there anything that 21 the Department in terms of granting this quarry 22 permit could do to control the blasting or how it's 23 blasted around an easement, whether it's a sewer 24 easement or a power easement? 25 A. Is there anything we could do? Yes. We</p>	<p>1 real issue that we've dealt with. 2 Q. Well, are you -- what about natural gas 3 lines? Do you know whether that's adjacent or near 4 any quarries today that the Department permits? 5 A. I don't know. We've not had that issue 6 raised as one that was brought forward as a concern. 7 With the number of gas and oil lines around the 8 state, it's more than likely that there are some 9 close to a quarry, but as I sit here, I don't know. 10 Q. What about -- let's just look at an example 11 here in Jefferson City. You know where the Farmer 12 quarry is located on Stadium? 13 A. Yes. 14 Q. Are you familiar with large businesses that 15 might have sewer lines that are right next to that 16 quarry? 17 A. Yes. 18 Q. Wal-Mart? 19 A. Yes. 20 Q. A new Knowles? 21 A. Right. 22 Q. Across the street is JC&G Medical Center? 23 A. Yes. 24 Q. Do you know whether there are sewer lines 25 that serve those companies?</p>
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<p>1 could condition the permit to stay further away. 2 Q. Okay. And do you... Well, okay. Would the 3 Department consider... Have you ever done a special 4 condition like that for an existing circumstance that 5 might be in the quarry area, where you've made a 6 condition as to how it can be operated? 7 A. This is our first experience where a high 8 pressure sewer line has been part of an application, 9 so we don't have any past history in that regard. 10 There have been a couple of situations -- and I 11 frankly don't remember the details, but I remember a 12 couple of times when the Commission has asked us to 13 write a letter adding requirements to a permit after 14 they have heard a hearing request. 15 Q. Okay. What kind of conditions would it be? 16 I mean, if you don't control blasting, would it be 17 just distance-type things or -- 18 A. It would be strictly distance. 19 Q. Okay. What about -- now that's for sewer. 20 What about for power lines going through a facility? 21 And I'm not talking about just electric lines going 22 from the box to the crusher, but I'm, you know -- 23 Ameren-type transmission lines. 24 A. Well, there are -- there are power lines 25 near many quarries. I don't recall that ever being a</p>	<p>1 A. Well, I don't have personal knowledge, but I 2 presume that there must be. 3 Q. Okay. And we talk about large power lines 4 going through existing quarries. Are you familiar 5 with the Lake Ozark Sand & Gravel facility right down 6 by where we're talking in the area that's on Highway 7 54 coming between the bridge and Jeff City? It's off 8 to the right as you're coming back towards Jeff City. 9 A. I know where you turn off to go to that. I 10 don't know anything about their site. 11 Q. Do you know whether there's, right now as we 12 sit here today, large Ameren power lines that are on 13 pillars going right across the middle of that quarry? 14 A. No, I'm not familiar. 15 MR. BROWNLEE: I have nothing 16 further. Thank you. 17 HEARING OFFICER: Mr. McGovern, 18 anything further? 19 EXAMINATION 20 QUESTIONS BY MR. MCGOVERN: 21 Q. Mr. Coen, from the standpoint of Sunrise 22 Beach, which I think you had mentioned, Magruder is 23 not the Applicant on Sunrise Beach; is that correct? 24 A. That's correct. 25 Q. Magruder is only the operator at that</p>

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<p>1 facility; is that right?</p> <p>2 A. That's right.</p> <p>3 Q. If there are instances of non-compliance at</p> <p>4 that facility, are those ones that the Department</p> <p>5 would take into account in determining a pattern of</p> <p>6 non-compliance?</p> <p>7 A. Good question.</p> <p>8 Q. That's what you said the last time.</p> <p>9 A. The NOV in such a case would go to the</p> <p>10 Applicant and not to Magruder.</p> <p>11 Q. And just keep in mind -- I guess I'll give</p> <p>12 you the same example we did the last time.</p> <p>13 Considering that the Applicant has nothing to do with</p> <p>14 the operations themselves --</p> <p>15 HEARING OFFICER: Excuse me just a</p> <p>16 moment.</p> <p>17 MR. MCGOVERN: Yes?</p> <p>18 HEARING OFFICER: We've played fast</p> <p>19 and loose with drawing conclusions of the law and</p> <p>20 everything else. I happen to just be on the site of</p> <p>21 the rule 10 CSR 40-10.100 definitions, and</p> <p>22 notwithstanding what the Director has said concerning</p> <p>23 the notice of violation, the notice of violation is</p> <p>24 defined as the document that is sent by the Director</p> <p>25 to the operator describing the nature of a violation.</p>	<p>1 EXAMINATION</p> <p>2 QUESTIONS BY MR. MAUER:</p> <p>3 Q. Mr. Coen, you understand this is an</p> <p>4 application request for a 100-year permit?</p> <p>5 A. Yes.</p> <p>6 Q. Isn't it true that it's fairly common for a</p> <p>7 quarry operation -- for the quarry operator to change</p> <p>8 from one company to another?</p> <p>9 A. Yes.</p> <p>10 Q. So during the life of this 100-year permit,</p> <p>11 it is quite possible and, in fact, would be common</p> <p>12 for Magruder to stop being the operator and somebody</p> <p>13 else to take over the operation?</p> <p>14 A. Yes.</p> <p>15 Q. And when that happens, the records to look</p> <p>16 at for the current operator or compliance would be</p> <p>17 who? The next operator or Magruder?</p> <p>18 A. If Magruder maintains ownership of the</p> <p>19 permit, we would still be looking at them for</p> <p>20 compliance, but if they sell the property and someone</p> <p>21 else becomes the operator, we would be looking at</p> <p>22 them. But, of course, there would be a public notice</p> <p>23 process involving that.</p> <p>24 Q. All right. So if Magruder simply allows</p> <p>25 someone else to come in and operate but still holds</p>
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<p>1 So I'm not sure -- and, Mr. McGovern, please</p> <p>2 understand, I'm not sure that in the Sunrise Beach</p> <p>3 issue, given what I just read as the definition, that</p> <p>4 the Applicant or the permit holder in that quarry</p> <p>5 would receive the NOV.</p> <p>6 MR. MCGOVERN: My position is the</p> <p>7 operator should.</p> <p>8 HEARING OFFICER: I think that's what</p> <p>9 the regulation requires.</p> <p>10 MR. MCGOVERN: And that's all I'm --</p> <p>11 we're revisiting a question we had actually addressed</p> <p>12 in a deposition.</p> <p>13 HEARING OFFICER: All right.</p> <p>14 Q. (By Mr. McGovern) And all I'm asking is if,</p> <p>15 in fact, the Applicant has no involvement, in light</p> <p>16 of what Mr. Tichenor has now pointed out in the</p> <p>17 regulations, do you think you should consider a</p> <p>18 notice of violation issued to -- and I'm talking</p> <p>19 about consider it for purposes of Magruder's history</p> <p>20 of non-compliance -- a notice of violation that's</p> <p>21 issued to the Sunrise Beach quarry?</p> <p>22 A. Yes.</p> <p>23 MR. MCGOVERN: I don't have anything</p> <p>24 further.</p> <p>25 HEARING OFFICER: Okay. Mr. Maurer?</p>	<p>1 the permit --</p> <p>2 A. Yes.</p> <p>3 Q. -- then the NOV would be -- you would have</p> <p>4 to look that up under Magruder?</p> <p>5 A. Well, according to what was just read, we --</p> <p>6 we would issue that to the operator, but the</p> <p>7 compliance requirements would still be to the person</p> <p>8 or the entity that holds the permit.</p> <p>9 Q. There has been some testimony in this matter</p> <p>10 about Magruder's intent and how they plan on</p> <p>11 quarrying and taking down a hill. Do you recall</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. Just given your testimony about it being</p> <p>15 common that you could transfer a quarry, are you</p> <p>16 aware of anything in the Department of Land Rec's</p> <p>17 regulations, rules or the permit that would bind any</p> <p>18 future operator to the intent that Magruder's</p> <p>19 expressed?</p> <p>20 A. Nothing currently.</p> <p>21 Q. Thank you.</p> <p>22 MR. MAUER: Nothing further.</p> <p>23 HEARING OFFICER: Anything further?</p> <p>24 MR. BROWNLEE: One question.</p> <p>25</p>

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<p>1 EXAMINATION</p> <p>2 QUESTIONS BY MR. BROWNLEE:</p> <p>3 Q. Since Magruder has operated the Sunrise</p> <p>4 Beach quarry, do you know whether there's been an NOV</p> <p>5 issued there, to anybody, Mr. Adrian or Magruder?</p> <p>6 A. I'm not aware that there has been.</p> <p>7 MR. BROWNLEE: Okay. Thank you.</p> <p>8 EXAMINATION</p> <p>9 QUESTIONS BY MR. MCGOVERN:</p> <p>10 Q. Are you aware of any issues of</p> <p>11 non-compliance with the laws administered by the</p> <p>12 Missouri Department of Natural Resources?</p> <p>13 A. I'm aware of a number of complaints.</p> <p>14 Whether or not those have resulted in finding actual</p> <p>15 non-compliance, I'm not sure.</p> <p>16 Q. And so I understand what you just testified</p> <p>17 to, if, in fact, you had physical evidence of a</p> <p>18 violation, for example, somebody took pictures or</p> <p>19 they had other evidence that, in fact, there was</p> <p>20 non-compliance, that still would not be considered by</p> <p>21 the Department because the Department hasn't issued</p> <p>22 an NOV; is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And so I understand further, you could have</p> <p>25 instances in which an investigator or representative</p>	<p>1 making that recommendation make any inquiry into the</p> <p>2 violation history of Magruder?</p> <p>3 A. No.</p> <p>4 Q. Why not?</p> <p>5 A. It's, again, direction from our Commission</p> <p>6 that investigation of non-compliance is not something</p> <p>7 that, given our small staff, we're going to spend</p> <p>8 time investigating unless a hearing is ordered.</p> <p>9 Q. Unless a hearing is ordered?</p> <p>10 A. Yes.</p> <p>11 Q. And so it wasn't until the hearing was</p> <p>12 ordered that there was any basis for Mr. Zeaman to</p> <p>13 prepare his e-mail and for you to forward that e-mail</p> <p>14 to the other programs within the Department; is that</p> <p>15 right?</p> <p>16 A. That's correct.</p> <p>17 Q. And you have no recommendation today based</p> <p>18 on any information gathered through that process</p> <p>19 regarding whether or not Magruder is an habitual</p> <p>20 violator?</p> <p>21 A. That's correct.</p> <p>22 MR. DUGGAN: No other questions.</p> <p>23 HEARING OFFICER: Recross on that?</p> <p>24 That concludes as far as counsel's questioning of the</p> <p>25 witness? Hearing Officer has one question.</p>
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<p>1 of Land Reclamation would go out to the site, and if</p> <p>2 that individual observed particularly emissions</p> <p>3 traveling beyond the property boundary, he wouldn't</p> <p>4 or she wouldn't issue a notice of violation but</p> <p>5 instead would call the Air Program and let them know</p> <p>6 about that issue of non-compliance; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And if the Air Program then had the time or</p> <p>9 the staff to send somebody out and their timing was</p> <p>10 right to actually see it, then maybe a notice of</p> <p>11 violation might be issued; is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. So even though we have observed instances of</p> <p>14 non-compliance, it wouldn't be counted?</p> <p>15 A. That's correct.</p> <p>16 MR. MCGOVERN: Okay.</p> <p>17 HEARING OFFICER: Mr. Mauer.</p> <p>18 MR. MAUER: Nothing further.</p> <p>19 MR. DUGGAN: I do have one.</p> <p>20 HEARING OFFICER: Mr. Duggan?</p> <p>21 EXAMINATION</p> <p>22 QUESTIONS BY MR. DUGGAN:</p> <p>23 Q. I just want to make sure the record is clear</p> <p>24 on this. For purposes of your recommendation to the</p> <p>25 Commission to issue the permit, did you prior to</p>	<p>1 EXAMINATION</p> <p>2 QUESTIONS BY HEARING OFFICER:</p> <p>3 Q. Are you aware of anything in the rules,</p> <p>4 regulations or the statutes that would prohibit the</p> <p>5 Land Reclamation Commission from imposing a condition</p> <p>6 on the granting of this permit that would run with</p> <p>7 the land? Do you understand the term run with the</p> <p>8 land?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have anything that would prohibit</p> <p>11 that?</p> <p>12 A. Nothing to prohibit it. In fact, the</p> <p>13 statute allows the Commission to make conditions</p> <p>14 after a hearing however they choose.</p> <p>15 HEARING OFFICER: All right. Now,</p> <p>16 does any counsel wish to ask only on that question</p> <p>17 that I posed? Any further clarification?</p> <p>18 MR. MCGOVERN: No.</p> <p>19 MR. MAUER: No.</p> <p>20 HEARING OFFICER: All right. Thank</p> <p>21 you, Mr. Coen. We have completed Respondent's</p> <p>22 case-in-chief?</p> <p>23 MR. DUGGAN: Yes, we have.</p> <p>24 HEARING OFFICER: I believe we have</p> <p>25 taken care of the introduction of RP's Exhibit 1.</p>

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Gentlemen, it's five minutes to 4:00. Do we want to take a short break and put -- commence with Mr. McDonald, or would you rather start fresh in the morning?

MR. BROWNLEE: We need to start fresh.

HEARING OFFICER: You did good work today, Gentlemen. And none of you are in the ire of the Hearing Officer, notwithstanding whatever impression I may have given. All right? With that, then, we are adjourned until 9:00 in the morning.

CERTIFICATE OF REPORTER

I, Judy K. Moore, Certified Court Reporter within and for the State of Missouri, do hereby certify that the hearing aforementioned was held on the time and in the place previously described.

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Certified Court Reporter
within and for the State of Missouri.